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A RESOLUTION CONCERNING ELIGIBILITY REQUIREMENTS FOR PROGRAMS UNDER THE INDIAN EDUCATION ACT

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HEARINGS

BEFORE THE

**SUBCOMMITTEE ON ELEMENTARY, SECONDARY,
AND VOCATIONAL EDUCATION**

OF THE

**COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES**

NINETY-NINTH CONGRESS

SECOND SESSION

HEARINGS HELD IN WASHINGTON, DC, ON APRIL 8 AND JUNE 16, 1986

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A RESOLUTION CONCERNING ELIGIBILITY REQUIREMENTS FOR PROGRAMS UNDER THE INDIAN EDUCATION ACT

TUESDAY, APRIL 8, 1986

**HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELEMENTARY, SECONDARY,
AND VOCATIONAL EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.**

The subcommittee came to order, pursuant to call at 10:05 a.m. in room 2261, Rayburn House Office Building, Hon. Dale E. Kildee presiding.

Member present: Representative Kildee.

Staff present: Alan Robert Lovesee, associate counsel, Bev Griffin, staff assistant.

Mr. KILDEE. The subcommittee will come to order. This is a hearing of the Subcommittee on Elementary, Secondary, and Vocational Education. The purpose of this hearing is to obtain a definitive statement from the Department of Education on an eligibility question which has arisen in the Indian Education Act Program.

On November 25, 1985, the Department sent a letter to all superintendents of schools which have programs funded under part A of the Indian Education Act. This letter seemed to stipulate the proofs which could be used by a student to establish proof of eligibility to participate in a program. It also apparently rescinded the policy of good faith compliance with the proof requirements, the policy established in 1980 to allow students with special difficulties to continue to receive services.

The Department's reason for the letter was clear. In the opinion of some in the Department, too many schools were counting for funding students with insufficient documentation. This would have the effect of diluting resources for those eligible students in need. The committee did not then, nor does it now, doubt the sincerity or the intent of the Department in promulgating this letter. However, almost immediately it caused a massive negative reaction from the Indian community and from congressional offices.

Much of this was occasioned by a lack of clarity in the letter or a lack of technical assistance to the field. Some of the concern was due to a feeling that special circumstances were not considered uniformly. People objected to the surprise element in the letter released and called for consultation.

In an effort to clarify the situation, the Department published a further letter on February 5, 1986. While this letter did in fact

clear up some policy questions, one problem remained. The Department did not state whether it intended to require grantees to follow the requirements of the November 25, 1985 letter for the fiscal year 1986 grants, even though fiscal year 1986 applications were due in on February 13, 1986.

This failure to clearly state what the requirements for the fiscal year 1986 grant would be created chaos in some school districts. The November letter only arrived in December, and a February implementation was complicated by Christmas and other recesses and vacations. In some cases the information to be obtained involved great effort and time.

Finally different opinions given orally by Department officials on the implementation time line made uniform compliance an impossibility. In an effort to afford legislative guidance to this situation, the Congress unanimously enacted House Concurrent Resolution 276 on February 7, 1986. This resolution called on the Department to not implement the requirements in a November 25, 1985 letter until the fiscal year 1987 grants.

It stated the sense of Congress that the fiscal year 1986 grants be given on the basis of pre November 25, 1985 policy, allowing the inclusion in the count of students for whom proof was still being sought. Based on staff discussions, I know that the Department has given this issue very, very careful consideration. They have been very open with us. They have been available to us, including by telephone. Dr. Davenport has been very, very available in trying to find some resolution to this problem. I commend him personally for that deep concern.

The purpose of this hearing is to determine the Department's decision relative to the implementation time line for any potential changes for proof of eligibility for this program. I am pleased to introduce Dr. Lawrence Davenport, who has roots in my district. Dr. Davenport has a very good reputation in my district and has many good friends there. He is the Assistant Secretary for Elementary and Secondary Education, and he is accompanied by Mr. Ervin Keith, Acting Deputy Director of the Indian Education Program.

Dr. Davenport.

STATEMENT OF LAWRENCE DAVENPORT, ASSISTANT SECRETARY OF ELEMENTARY AND SECONDARY EDUCATION, U.S. DEPARTMENT OF EDUCATION, ACCOMPANIED BY ERVIN KEITH, ACTING DEPUTY DIRECTOR, INDIAN EDUCATION PROGRAMS

Mr. DAVENPORT. Thank you, Mr. Chairman. Thank you for the opportunity to present the Department's position on the implementation of the Indian Education Act.

Section 453(a) of the Indian Education Act establishes the eligibility of Indian children to be counted for the purpose of generating funds under the formula grant program authorized by part A of the act. The Department has addressed this provision by requiring that grantees, local educational agencies and certain tribal schools, participating in this program maintain Indian student certification forms for each child claimed for purposes of payment.

Section 1149 of the Education Amendments of 1978 requires the Department to conduct program audits of at least one-third of all

part A projects annually and to report the findings of these audits to Congress. Our recent annual reports to Congress have shown a significant and continuing decline in the extent to which school districts maintain complete Indian student certification forms. Forty percent of the projects reviewed for the fiscal year 1982 grant period maintained complete eligibility information for each student claimed.

The rates for programs reviewed in fiscal year 1983 and fiscal year 1984 were 23 and 15 percent, respectively. The fiscal year 1985 program reviews will be completed by June 1986. The Department will meet its statutory responsibility and ensure that only eligible students are counted under this program. For that reason, in a November 25, 1985, we provided guidance to school superintendents for maintaining complete forms in order to document student eligibility under part A.

In a second letter, dated February 5, 1986, we informed school superintendents that the intent of the first letter was not to impose any additional requirements beyond those currently required by statute and regulations. Rather, the intent of both letters was to provide guidance and assistance to part A applicants and to put them on notice that we intended to fulfill our responsibility under the law—that is, to ensure that only eligible Indian children are counted by school districts for the purpose of generating payments under part A.

The Department will inform school districts that for the fiscal year 1986 grant period, they may continue to count students for whom they are still seeking to obtain complete forms.

Mr. Chairman, as you know, the issue of establishing and documenting Indian student eligibility under part A of the Indian Education Act is both complex and sensitive. We have no desire to eliminate any eligible child from either generating funds under, or from participating in, this program. On the other hand, we must require proof of eligibility sufficient to ensure that each participating school district receives its fair allotment of funds.

To this end, the Department will use the rulemaking process to clarify that a school district must obtain documentation children prior to the school district's counting that child to generate funds under this program. Through this rulemaking process, the public, including Indian parents and school officials, will have the opportunity to help us develop regulations that are consistent with statutory requirements and are both effective and equitable. We plan to publish proposed rules as soon as possible and to have final rules which would apply to fiscal year 1987 awards for use in the 1987-88 academic year.

We would welcome any advice that you and your staff may be able to provide us.

Thank you very much. We will be happy to answer any questions.

Mr. KILDEE. Thank you, Dr. Davenport.

Dr. Davenport, on page 2 of your statement you stated and I quote, "The Department will inform school districts that for the fiscal year 1986 grant period they may continue to count students for whom they are still seeking to obtain completed forms." This leads me to conclude, then, that the Department and the Congress

now are in agreement on the fiscal year 1986 grants. Is that a correct statement?

Mr. DAVENPORT. Yes, sir.

Mr. KILDEE. Thank you, Dr. Davenport.

There have been more than a few districts who have submitted applications based upon a different interpretation, and I know that the Department has already been affording districts an opportunity to amend their student counts. With that in mind, I want to ask these questions: When will the Department send out this policy clarification to the schools and how will that be transmitted?

Mr. DAVENPORT. There will be two separate letters, Mr. Chairman. The first letter will inform school districts of our clarification that the count can be used for 1986-87. The second letter will forward the school districts an opportunity to amend their count. We normally do this in the spring because the districts get a more firmer count in the spring, this would allow them what we have done traditionally to allow them to amend their counts this way.

Mr. KILDEE. How long will the school districts have to amend their 1986 student counts?

Mr. DAVENPORT. May 1.

Mr. KILDEE. May 1.

Who will be responsible for the development of the new regulations on eligibility?

Mr. DAVENPORT. The Department will, and we will publish that in the Federal Register. We would appreciate any comments that you or your staff would have, Mr. Chairman, on how we can document eligibility so it would be most equitable, and it would also meet our end that we need to do.

Mr. KILDEE. Do you have any idea what the length of time will be before these proposed regulations will be ready for publication?

Mr. DAVENPORT. I would hope that we could publish them—I better not give an exact answer on that. I think sometime late spring I hope we would be able to get these published, that they would be in place by the time school's session—in time for November at least that the schools would be back in session before they have to provide this information by February 13 next year.

Mr. KILDEE. Mr. Lovesee, do you have any questions on that?

Mr. LOVESEE. No.

Mr. KILDEE. I look forward, along with Mr. Lovesee, the counsel on Indian Affairs, to working with you both on the regulations. I really want to express my thanks on an exemplary example of cooperation between the executive branch and the legislative branch where both sides have tried to preserve their prerogatives, but have still understood that we are serving the Indian community.

I think this has been an excellent example of that cooperation from the beginning. Every phone call I have made has been promptly returned with a real, deep concern to find some resolutions. We look forward to working with you on the regulations, and also, after that, we look forward to trying to address this problem in total because there will still be questions in 1987 that we will want to address. We look forward to working with you and with the Indian community to try to find some permanent resolution to this. I think you have set a very good example that people could follow.

Do you have any other questions, Mr. Lovesee?

Do you have any closing remarks, Dr. Davenport?

Mr. DAVENPORT. No, Mr. Chairman, except I would like to say that we share, the Department, the same goal that you do, and that is to insure that the Indian children receive the services which we have available to them with the funds that we have, and when one district gets an increased allotment which they may not be entitled to, that means that there is less money being spent somewhere else for students who are in need.

Mr. KILDEE. In all instances we want to make sure that eligible students receive the funding, and in times of limited resources that becomes even a more compelling matter. We look forward to working closely with you, and I thank you, and I thank Mr. Keith also for accompanying you. We will work together with both of you on this.

Mr. DAVENPORT. Thank you, Mr. Chairman.

Mr. KILDEE. Thanks a lot.

[Whereupon, at 10:15 a.m., the subcommittee was adjourned subject to the call of the Chair.]

A RESOLUTION CONCERNING ELIGIBILITY REQUIREMENTS FOR PROGRAMS UNDER THE INDIAN EDUCATION ACT

MONDAY, JUNE 16, 1986

**HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELEMENTARY, SECONDARY,
AND VOCATIONAL EDUCATION,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.**

The subcommittee met, pursuant to call, at 10 a.m., in room 2257, Rayburn House Office Building, Hon. Dale E. Kildee (chairman of the subcommittee) presiding.

Members present: Representatives Kildee, Goodling, and Gunderson.

Staff present: Alan Lovesee, counsel, and Bev Griffin, staff assistant.

Mr. KILDEE. The subcommittee will come to order.

This is a hearing of the Elementary, Secondary, and Vocational Education Subcommittee, to obtain testimony regarding the plans of the Department of Education to change the requirements on the proof of eligibility for the Indian Educational Act part of the formula grant program.

We are particularly pleased that our witnesses today are all Indian Act program directors. I can't think of any group who has a greater interest or greater knowledge of this program than you. I already said and I say it whenever I have a meeting of people involved in Indian education, that the Federal Government has a moral, legal, and treaty obligation to the Indian people of this country—moral, legal, and treaty—and I always commend people who go down the street a little ways to our National Archives to read the Indian treaties.

We have treaties signed with the Indian nations and tribes of this country, just as we have treaties signed with other nations of the world. Virtually every one of those treaties—all those that I have read—the U.S. Government promised to the Indian nations education in return for millions and millions of acres that was given up by the Indian nations, almost always unwillingly. In return for taking that land, the Indian was promised education. So if the U.S. Government were to abdicate any responsibility for education elsewhere, to the other people of this country, it has a particular treaty obligation to the Indians of this country.

That relationship is unique. As long as I am in charge of oversight for Indian education, I am going to try to remind the Mem-

bers of the Congress, who are also part of that trust responsibility, that we do have that treaty obligation to provide education to those people from whom we took their wealth and their land and almost their heritage. I hope that is not the case. I think only because of strong Indian leadership has that heritage been maintained to the degree that it has.

I believe very strongly in this. This is the second hearing this year into this topic. The Department's proposal to substantially restrict the proofs which could be submitted by parents and do away with the concept of good faith compliance with requirements of in certain cases, has deeply troubled many in this field.

The Department has acted very responsibly in deciding not to make this change by letter or to apply it in fiscal year 1986. However, the Department's plan to publish regulations on this issue for fiscal year 1987 means that input, with the aid of the Department, in structuring a workable process is very much in order.

I have asked Dr. Lawrence Davenport, the Assistant Secretary for Elementary and Secondary Education, to work with us in formulating a set of regulations which meets the reasonable concerns regarding the program's integrity. This hearing is to begin the process of setting out some of the parameters of the problems and potential solutions.

With that explanation I will now ask our first panel of experts to begin their statements. I will ask every one of the witnesses to restrict their oral statement to a short summary, if possible, of their prepared remarks, and your written remarks will be included in their entirety in the record.

Our first panel consists of Christine S. Reed, program office, Indian Education Programs, Flint, MI. I had the privilege of teaching in Flint at the board of education for 8 of my 10 years of teaching. I tell people in real life I was a school teacher.

Ms. Reed will be joined by Archie Mason, director, Indian pupil education, Tulsa Public Schools, Tulsa, OK; and Ms. Pat Ross, Indian Education Center, Moore Public Schools, Moore, OK; and Ruth Dial Woods, assistant superintendent, division of compensatory education, Roberson County Board of Education, Lumberton, NC. I have had the occasion to drive through Lumberton on a number of occasions, and I have been treated most graciously by the Lumba Indians in that area. I make a point of buying my gasoline at a station owned by the Lumbas there. Congressman Charlie Rose has a very deep and abiding concern for the Lumbas. I can recall that many years ago one night on the floor when I found out how strong his feelings were on that issue. He has certainly been part of my education as to the Lumba Indians of this country.

If we could begin now, Ms. Reed, from Flint, MI.

STATEMENT OF CHRISTINE S. REED, PROGRAM OFFICE, INDIAN EDUCATION PROGRAMS, FLINT, MI

Ms. REED. Congressman Kildee, my name is Christine Reed. I am program officer for the Flint Michigan Community School for Indian Education. Thank you for inviting our school district to testify at this hearing.

The Flint School District has been in the Indian Education Program for 12 years. We have had many successes over that period of time but also many problems, as I am sure everybody has. One of our great concerns is the requirements that will come into effect on January 1, 1987. This will affect approximately half of our students enrolled now.

Some of our families are having difficulty in getting documentation to complete the OIE form 506. Some of that is because of time constraints on the part of the families, the time that they have to put in to get documentation, sending letters, telephone calls, traveling to areas, agencies, to get birth certificates, marriage certificates, and the like. Also making telephone calls to the area BIA office, tribal offices.

Many of our people cannot afford this expense. The majority of our families in the Flint program are on assistance or are low income. Our office does assist many in making the calls to the BIA offices where we can assist them, but many families do not ask for that assistance because they are proud people and they would rather do it on their own.

Also, these same families have sent letters to tribal offices and BIA offices and often they do not even get their letters. One family waited 2½ years before they got a reply to their letter. That is just kind of typical of them lately. It seems that BIA offices had some things come down to them. They seem to be getting their replies out earlier now than what they did 1 year ago.

One family alone, the woman can trace her bloodline back to 1925. She had to make a number of telephone calls to tribal offices over a period of 8 months. She made five long-distance calls to the tribal chief, who happens to be her cousin, before he would sign her certification for her child to be eligible.

There are many examples in here why people cannot get their documentation. I will not go into all of them here. One concern in Flint is the provision made for adopted Indian children. We have at least 10 adopted Indians in our program now. We have been told that we had to get affidavits from the agency office and from the adopted parents to the bloodline of these children. I have tried to do that and I have not had any cooperation from agency offices.

Many of our people that are having these problems, they are people from Michigan that I personally know their own family. They are proud people. They know their tradition and their background, yet some of the recordkeeping is incomplete and they are having problems.

The full-bloods feel they are being harassed after signing the first OIE form—506—that came out. They feel that they are being harassed by having to sign more papers every 3 or 4 years, stating the eligibility of their children. We feel that more liberal interpretation or relaxation of this new ruling that is due to come out should go into effect. Many of our people will be turned down.

I will not go into all of the examples but this year alone, in Flint, from September 1985, our staff and their parent volunteers has logged 2,700 hours helping our parents update the student files to try to get the needed documentation. That included long-distance telephone calls and office visits with parents, getting their family

tree together, making home visits, telephone calls with the parents, everything concerning the updating on these files.

So alone we have not received answers back on the certification from offices and I doubt if we will receive some of the documentations in time for January 1.

We feel that maybe one relaxation definition of Indian, as Felix Cohen described Indian, taken from the Handbook of Federal Indian Law:

An Indian is a person who has Indian blood and is enrolled in an Indian agency or reservation rolls, or if not so enrolled, if the proportion of Indian blood is one-fourth or more, or if that person is regarded as an Indian in the community where he lives or she lives, this should be considered.

People are affiliated with the Indian Center in Flint but are not actively enrolled. I guess in the tribal offices, as the tribes did close their enrollment a few years back and they cannot enroll now.

I believe everything is written here and I do not feel that I should take up everybody's time, by going over these. I do have some concern though on the ruling that is coming down.

Thank you.

[The prepared statement of Ms. Reed follows:]

Mr. KILDEE. Thank you very much for your testimony. We will go to the other three witnesses, then we will have questions from you individually and collectively.

Our next witness is Mr. Archie Mason.

**STATEMENT OF ARCHIE MASON, DIRECTOR, INDIAN PUPIL
EDUCATION, TULSA PUBLIC SCHOOLS, TULSA, OK**

Mr. MASON. Thank you. It is my honor to be here and to address this committee. I am the project director of the title IV part A program in Tulsa Public Schools, and I appreciate the opportunity to express the concerns of my peers and colleagues in Oklahoma and reflections of others throughout Oklahoma interested in Indian education.

Our Tulsa project has been in operation since 1973. It is the largest program in the State, almost 3,000 Indian kids there, kindergarten through the 12th grade. We have 97 schools in our school district and we have title IV Indians in 92 of the school sites. We have 43 different tribes in our metropolitan area identified in our program.

Our city is bounded by the Osage Nation, the Cherokee Nation, and the Creek Indian Nations of Oklahoma. I have been associated with Indian education since 1973 serving first on the parent committee. I was a classroom teacher at the time. I helped develop the first proposal that Tulsa sent and we have been doing that ever since.

I would like to relate now some of the concerns that we have in Tulsa regarding this form 506. We have been administering this form for many years now. There have been many observations of this form, many concerns, and I feel, as we stated just a moment ago, far too many man-hours are involved in this particular form.

Our parents find it difficult to understand, especially those who are bilingual or speak their tribal language or dominant language, and those parents that have a limited educational background that

find this form difficult. They don't understand it. It is intimidating, it is confusing. Many of our parents are discouraged any more to fill out any kind of forms.

This particular form that the Office of Indian Education Programs has now, our parents have a difficult time with some terms there, natural parents, ancestor first degree, natural grandparent, ancestor second degree, those things.

There are Indian people who question that statement written on the form that they have to be considered by the Secretary of the Interior in order to be eligible for title IV participants. They don't even know who he is, yet that person is supposed to determine their Indianness.

Now, in Tulsa, in order to receive some assistance through our program, accordingly the members of the five civilized tribes must use an enrollment number assigned to their ancestors who were living in 1907 during the Dawes Commission. The children today, they don't own their own personal numerical identifier. That term came out of EAP, they have to use that number that was assigned an ancestor. But for the kids today, the owner of that number is passed on to the second degree. It is the third degree, great grandparent that had it and it makes it difficult for them, it makes them ineligible, but yet they are as much Indian as their parents or their grandparents or great grandparents who had to sign the paper.

Down in Oklahoma, with the number of tribes that we have, especially in Tulsa, we have those that use a tribal census number. I am a member of the Osage Nation. I have a census number, and Osage census number, not a tribal number. It is based on an allotment number that my grandparents had.

Other tribes, for example the Seminole Tribes, use Social Security numbers. The Pawnee Tribe in Oklahoma, they don't even use a number, they have a letter they send to their members, a written letter, certified letter. So a number as an identifier doesn't appear with those people.

Some of the tribes, they don't register Indians down there who are less than a quarter. You have to be at least a quarter Indian to be a member of their tribe. We have some tribes in Tulsa, who are from the West, the Southwest, and I understand you have to be at least half in some of their tribes out there to be an Indian. They are here in the city, and we are asking them to prove all of this.

I think our Indian people have been proving our pedigrees for a long time, over and over again, and I can't personally think of any other group of U.S. citizens that have to prove their citizenship, their heritage, their culture, as many as we Indian people. These are mandates that come out of these front offices up here.

This Indian Education Act has its own definition for Indian. This definition of Indian which comes from the Office for Civil Rights also, they are both under the same Department, U.S. Department of Education. I wonder why if they come from the same Department, why are they different? Our parents just have a difficult time with these definitions of Indian.

As a project director, a local staff person, a public school employee, I don't really enjoy the role, I don't like the role of being approving officer of our parents and children who are seeking assistance from the Indian Education Program. I think when a parent

provides the necessary documentation, information about their child to us, they sign the form, it becomes a legal, binding document between them and the Government or the bureaucracy of that Government, Indian agency, whoever that may be. But I don't believe I have the authority as a project director, an employee in any role there, to say you are an Indian or you are not an Indian because you have this or don't have that. So that is a problem we have at the local levels.

I recognize the complexity of the definition, the many definitions of American Indian, but I hesitate to tell a parent that their child is not an Indian because they don't have this or that. It is stressful and it is very frustrating to our parents. We Indian people, we are proud of who we are, what we are, even though the system mandates to us that we have to carry this plastic card, or numerical identifier to provide and prove to the system that we know who we are. Those things become difficult for us.

At this point, I would like to make some recommendations regarding this 506 and definitions.

I think that 506 could be done very simply, in much simpler language. I think if parents can supply a child's legitimate identifier, or that of any ancestor of that child, that ought to be proof enough of a child's Indianness. I don't think there should be any limit on how far they have to go back to get that.

I think that a child who is born or receives services from the Indian Health Service in that department or division, and they have IHS chart number, I think they should be able to use that to prove their Indianness. I understand the child or parents, they have to prove their Indianness before they can get services from IHS. If that has already been done once, I think we should be able to use that number, the children should be able to use that.

With regard to adoption, I think any adoption papers which state that the child is of Indian descent should be evidence enough. Birth records are inaccessible, difficult to obtain to the adoptee and to his parents, at least in Oklahoma.

I think the explanation of title IV should be removed from that 506. This could appear on a separate page which could also describe the local program to the people, they can keep that page, and just send some simple information back to us on a different form.

I have included in my testimony a sample of a very simple kind of form that we could live with in Tulsa. I hope the others could too. I think the letter from an adult member of the family should suffice in isolated cases. This can be considered by the parent committees. I think the parent committees, along with the Indian staff represent the local Indian communities. They in turn could determine if that student is culturally associated with the American Indians.

Mr. KILDEE. This is the form that you would suggest?

Mr. MASON. Yes, sir.

Mr. KILDEE. Thank you very much.

Mr. MASON. I believe that if one of the intents of this act was to actively involve our Indian parent committee and that the Office of Indian Education Programs encourage parental involvement, then the parent committees should be engaged in determining some of these isolated cases.

The Office for Civil Rights defines Indian as a person "having origins in any of the original peoples of North America, and who maintains cultural edification through tribal affiliation or community recognition." The racial and ethnic designations as used by the U.S. Department of Education Office for Civil Rights, do not denote scientific definition of anthropological origins. So a student could be included in this group to which he or she appears to belong. No person can be accounted more than once nor one racial, ethnic category.

We have problems with that, too, at the local levels with regards to counties. We have mixed blood Indian children. How do you count them on the permanent records at school? They get counted with the W or B, or I. It depends on what the parents enrolling them I think as to how they are identified.

I have been around this for some time. I have seen a lot of changes. This current 506 form that we have, I remember when it first came out, it came out in triplicate if I am not mistaken. We were to fill it out and have it filled out for the purpose of study and then tear off the top, tear off the bottom, and send in the middle up here. That study has been completed I believe. I don't know if I have ever seen the results but we still have the form, even though the study is over.

Mr. KILDEE. Was that 506 form in any way intimidating to parents or people in the program?

Mr. MASON. Yes sir, very very intimidating. It is frustrating. That document is just difficult. I think the wording, the whole thing could be much simpler. I think it has served its purpose back at the beginning when the study was being made and the information acquired to put on there. However, today, we are supposed to have been achieving and succeeding with this Indian Act and we should have a record pretty much up. If we are doing what we say we are doing, I think we do.

But we keep receiving directives that we must continually change, update, or we get another recommendation or piece of advice. Technical assistance it says contradicts one that has been given us earlier. So we have some problems with that.

Mr. KILDEE. A few years ago, I remember one of the forms had a statement that any false statement made on it is in violation of Federal law. I know that was very frightening to some people because they were putting down what they felt was in good faith, the description of Indianness of that child, but they were worried that maybe they would stumble into a violation of Federal law.

Mr. MASON. Well, I would like to wrap it up now and I again appreciate the opportunity to have addressed you. I am accountable for things I have said here coming out of my mouth, and the experiences I have had there in Tulsa, and the rest of my testimony is presented to you in written form.

Thank you.

Mr. KILDEE. Thank you very much.

[Prepared statement of Archie Mason follows:]

PREPARED STATEMENT OF ARCHIE MASON, JR., PROJECT DIRECTOR, TITLE IV-A, TULSA
PUBLIC SCHOOLS, TULSA, OK

Honorable Chairman and distinguished members of the Elementary, Secondary, and Vocational Education Sub-Committee of Education and Labor. My name is Archie Mason, Jr. I am the Project Director of the Title IV-A, program of Tulsa Public Schools, Tulsa, Oklahoma. I am grateful to the Committee for allowing me the opportunity to express my concerns regarding the Office of Indian Education Programs Form 506 and the Title IV definition of Indian. I bring with me the consensus of many of my peers and colleagues in Oklahoma and reflections of others throughout Oklahoma interested in Indian education.

The Tulsa Title IV-A project has been successfully functional since October, 1973, and is the largest Title IV-A grantee in the State of Oklahoma. Currently, the project has 2,986 Indian students enrolled in kindergarten through the twelfth grade. The district has a total of 44,131 students in 97 schools, with Title IV students in 92 of these schools. There are 43 different tribes represented in our Title IV-A project and our city is bounded by the Osage Nation, the Creek Nation and the Cherokee Nation.

I have been an active participant in Title IV-A since serving on Tulsa's first parent committee, in 1973. I had a part in the development of the first proposal developed in the Tulsa Public Schools, thus, I have observed and been a part of the Indian education program in Tulsa since its beginning. I have been employed by Tulsa Public Schools for twenty years as a classroom teacher, counselor and administrator. I am a professional educator who happens to be an American Indian.

I will relate to you the concerns we have within the Tulsa project

regarding the Form 506. The Tulsa Title IV-A project has for many years now been administering the Indian Student Certification Form 506. There have been many observations made of this document, many concerns, and, I feel, much too many man hours involved in the processess surrounding this form. Parents of a limited educational background or parents who are bi-lingual and speak their tribal language as their dominant language find the 506 difficult to understand, intimidating and confusing.

Many of our Indian parents are discouraged to fill out any more forms. They do not understand what is meant by "Natural Parent (ancestor, 1st degree)" or "Natural Grandparent (ancestor, 2nd degree)". There are Indian people who question the statement that they must be considered Indian by the Secretary of the Interior in order to be an eligible Title IV participant. To receive Title IV assistance in Tulsa, members of the Five Civilized Tribes must use an enrollment number assigned to their ancestors who were living in 1907, during the Dawes Commission. They do not have their own personal numerical identifier. Other tribal members in Oklahoma use a tribal census number or their ancestors. Others use allotment numbers, and another tribe uses Social Security numbers.

Some tribes do not register members unless they are $\frac{1}{4}$ degree of blood. The Pawnee Tribe in Oklahoma does not issue a number or membership card, but dispenses certified letters of membership.

Our Indian people have been proving their pedigrees over and over again. I cannot think of any other group of U.S. citizen who continually have to prove their cultural entities and heritage as much as Indian people.

The Indian Education Act has its own definition for Indian, which is different from the definition of Indian which comes from the Office

for Civil Rights, although they are both under the same entity, the United States Department of Education. Why? if they come from the same department, why do the definitions differ? Some of our parents find it difficult to understand the definition of Indian.

As a project director, a local staff person, a public school employee, I personally do not like the role of approving officer over our parents' children who are seeking assistance from the Indian education program. I feel that when the parent provides to us the necessary information about their child, signs the form, it becomes a legal binding document between them and the bureaucracy of the government Indian programs. I don't believe I have the authority to determine another person's Indian-ness, and I don't want the authority which has been dealt to us at the local level. I do recognize the complexities of the many definitions of American Indian, but I cannot say to a parent that his information does not fit the definition of Indian. I am an American Indian. I sympathize with those Indian parents seeking documentation from the various tribes in our country. It can be a stressful, frustrating process. We Indian people are proud of who we are and what we are, however, even though the system mandates to us that we must possess and carry a plastic card or a numerical identifier to prove to the system that we are what we know we are.

RECOMMENDATIONS:

1. The 506 should be in simpler language.
2. If parents can supply a child's legitimate identifier or that of any ancestor as being Indian, that should be enough proof of a child's Indian-ness. There should be no limit on how far back the ancestor can be.

3. A child who was born in or receives health services from an Indian Health Service facility should be able to use his IHS hospital chart number in order to qualify for Title IV-A. The child or parent must prove their ancestry before services are rendered by the IHS. This is often the only Indian documentation that a child of divorced or separated parents can obtain.
4. Any adoption papers which state that the child is of Indian descent should be evidence enough to qualify the child for Title IV-A. Birth records are inaccessible to the adoptee and his adoptive parents.
5. The explanation of Title IV should be removed from the 506. This could appear on a separate page which could also describe the local Title IV project and personnel. This page could be retained by the parent. I have included with this testimony my example of a simpler student information form.
6. A letter from an adult member of the family should suffice in isolated cases. This can be considered by the Indian parent committee.
7. The parent committees along with the Indian staff represent the local Indian community and could determine if the student is culturally associated with American Indians.

I believe that if one of the intents of this Act was to actively involve our Indian parent committees and that the Office of Indian Education Programs encourages parental involvement, then they should be engaged in determining isolated cases. The Office for Civil Rights defines an Indian as a person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition. The racial/ethnic designations, as used by the U. S. Department of Education, Office

for Civil Rights, do not denote scientific definitions of anthropological origins. A pupil may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging to. However, no person should be counted in more than one racial/ethnic category. When a legitimate identifier cannot be obtained, the parent committee may then approve with the recommendation of the local Indian project staff the student's participation into the local Title IV project. OCR being under the same hierarchy as IEP.

As one who has been around Indian education for sometime now, I can remember when this current 506 form first came into existence. I remember when it was in triplicate and we were required to tear the top third and bottom third off of the form and mail the middle third to the Washington OIE office for a study. I remember a private non-Indian firm coming into our project asking questions and gathering information for this important study. I assume this study was completed, but we at the local levels still must use this same 506 form. Today June 16, 1986, we are addressing the same questions we, as local Title IV project personnel, were asked to address in 1973. I have seen the IEP staff come and go. But we are still working at the local levels and basically facing the same concerns we faced in 1973.

In summary, I ask this committee to consider a much simpler Indian student information intake sheet and to consider these concerns I bring from my colleagues and parents. The mandates of Indian education need not be difficult and complicated. We at the local levels will continue to assist our youngsters and continue to do all we can with what we have. Should the definition and the 506 form not be changed, and should the technical assistance services continue their inconsistencies we will

survive.

Our Indian children still need and deserve the assistance and support of our government to better prepare for the rest of the century. Our children are our future. They are the extensions of our ancestors and their teachings and wisdom.

Your considerations of my opinions and observations are appreciated. I hold myself accountable for the comments which I have expressed to you.

DATE _____

TITLE IV-A
INDIAN STUDENT INFORMATION

In order for your child to be eligible in this school district's Indian project, please complete this form.

I. _____

CHILD'S LAST NAME	FIRST	MIDDLE	ADDRESS	ZIP
SCHOOL			GRADE	
INDIAN TRIBE (S)			DEGREE OF INDIAN BLOOD	

II. Does your child have

An Indian roll number or registration number? ☐ yes ☐ no # _____

A certificate of degree of Indian blood? ☐ yes ☐ no

An Indian hospital chart number? ☐ yes ☐ no # _____

Any other kind of Indian card or number? ☐ yes ☐ no

Explain: _____

Was your child born in an Indian hospital? ☐ yes ☐ no

If adopted, do the adoption papers state this child is of Indian descent?

☐ yes ☐ no

III. If you cannot answer the above questions:
Please provide information about any of the child's Indian parent, grandparent, great-grandparent or great-great-grandparent.

NAME	(MAIDEN FOR WOMEN)	TRIBE (S)	DEGREE
Relationship to child _____		Their roll or registration number _____	
Do they have a CDIB? <input type="checkbox"/> yes <input type="checkbox"/> no		Their Indian hospital chart number _____	

IV. The information given above is true and the local Indian parent committee may review this information if necessary.

Parent or Guardian Signature _____

Today's Date _____

Local Form approved by _____
SCHOOL OFFICIAL

- RETURN THIS FORM TO THE INDIAN EDUCATION OFFICE -

Mr. KILDEE. Our next witness will be Ms. Pat Ross from Moore, OK.

**STATEMENT OF PAT ROSS, DIRECTOR OF STUDENT SERVICES,
INDIAN EDUCATION CENTER, MOORE PUBLIC SCHOOLS,
MOORE, OK, ACCOMPANIED BY RICHARD WILLIAMS**

Ms. Ross. Congressman Kildee, I had asked permission from Mr. Lovesee to share part of my part with a consultant who works with me.

Mr. KILDEE. Absolutely.

Mr. Ross. I am going to let him do the first part. I will pick up from there. This is Dr. Richard Williams.

Mr. KILDEE. Very good. His testimony will be made part of the record also. Please give your name again for the record.

Mr. WILLIAMS. My name is Richard Williams, and I live in Norman, OK, which is just 7 miles from Moore, and together we have prepared our statement from that district, and I will take the first half and then Ms. Ross will take the second half.

We are concerned, of course, with Indian education and Indians of the United States. Our main knowledge of the problem has to deal with Oklahoma, where we live and we have really focused from our experience in Moore, OK, and the problems that come to us also across the State, because we have attempted to integrate our feelings with the people that we work with in that State.

We would like to take just a moment and go into some of the background of how Indian rolls were established. The State of Oklahoma is divided into two areas by the area codes, the western part of the State and eastern part. These two areas represent the western Indians and the eastern Indians. Our western tribes have inhabited the plains of Oklahoma for many, many years. When the Government moved out there, they did little for the Indian tribes, the western tribes, except try to control them with military forces, and the tribes really they didn't have much money, they kept very few records, and certainly there were no rewards for the clerical efforts of their early membership.

Now, the five tribes that we refer to, in eastern Oklahoma, these are tribes that were driven from the south. That record has been established in our history books for years—the Trail of Tears and the many lives that were lost over this 20-year period by Cherokees. Even the Creeks were driven with force and they rebelled among themselves on whether migration should take place. They lost many of their members in this migration to the State.

However, in 1816 to 1820, many of the treaties that we refer to in our opening statements, were written and signed. A people went to Oklahoma knowing that Indian territory would be theirs. Then in 1889, Congress decided to open the land for the white settlers. They opened the land the the settlers came in and the non-Indians took over the Indian territory and their land.

The Dawes Commission then came to Oklahoma to establish enrollment for the Indians and to try to cover up taking the Indian lands, gave the Indians an allocation of land. If you had come and signed the roll and registered, you could receive 80 acres.

Now, when the commission signed, started to sign the roll, we must remember that many of the native Americans after 20 years of migration from the south, much in bitterness and loss of loved ones and family, many of them were still resentful of the white man and the white man's ways. There were many Indians that refused to sign the Dawes Commission, refused to be enrolled, and there ancestors cannot be traced even though they were native American citizens.

The Dawes Commission also had another characteristic that was very interesting. You had to live in the Indian territory to be part of the rolls. If you lived across the river in Arkansas, or across the river into Texas, you could not sign the rolls. Now, we have heard of people that lived on the other side of the tracks. We also have Indians in Oklahoma who have heritage, that lived on the other side of the river. They were not part of those original rolls, and has been established by the current register of the Cherokee Nation, there are many Cherokee Indians that cannot be documented from tribal rolls their Indianness.

They were there, there in our State, but they cannot be part of the enrollment that is being declared on this 506 form.

All five tribes except the Chickasaws, when they went through enrollment were able to enroll the black slaves they brought with them from the south. This enrollment took place and these blacks were given citizenship in the tribe. They were called freedmen. We have many blacks in the State of Oklahoma who were not native Americans who possess CDIB cards. They have the white card and the card is stamped freedman. So here we have a group of people, if we follow tribal enrollment for participation, who were not native Americans but are participating in this type program.

In 1924, the United States decided to make native Americans citizens of our country. To me that was a great act. But this did not make it popular to be an Indian, because now we had Indians that intermarried, Indians and non-Indians. It was difficult for the tribe to accept intermarriages. It was difficult for the white community, the Anglo-Saxon community to accept intermarriages, so it was an unpopular thing for many years to be part Indian.

The State of Oklahoma, as we know it through its history and today, I am not proud to say is referred to as a red neck State. This is a State that discriminates against minorities. This is a State that does not give them full status. In our public school system, in the sixties and early seventies it was not popular in the State of Oklahoma to announce that you were an Indian. Our Indian education program has done a lot to helped the concept of Indian in the State of Oklahoma. We are pleased for those advances.

We find that 506 form is discriminatory in its current status in four ways:

First of all, that the native American is the only ethnic group that must prove its ethnic background in the United States, to participate in a program.

Second, part 1 states that the natural ancestors of the first degree and natural grandparents ancestors of the second degree, Dawes Commission closed those tribal rolls in 1906. That means if a grandparent is 80 years old, their child, their grandchildren can

participate. Any grandparents over that are not eligible as the 506 form is currently written.

We find that we have grandparents of the children that attend our schools and more in their late forties and their early fifties. We must go further back if we are going to go to the rolls for some type of identification.

The third point that we feel that this is discriminatory, there are many native Americans of five tribes ancestors who were not part of the Dawes Commission enrollment. They are native American.

And, of course, the fourth reason that we feel that this particular form is discriminatory is that there are no provisions for native Americans who have been adopted and have adoption pages.

Now, I am sure that it would be impossible to interview a Representative or a Senator that would want to discriminate against any children or citizens of the United States. But we followed the traditions, the precedents, the political structures of the past, and the U.S. Government has broken many of the treaties that it has given to the Indian Nations.

But there is no other citizens, other than the native American, that must carry a white card, or prove or have it photostated at school and be on record to participate in one of our free public school programs.

The Bilingual Education Program is open to all children that enroll in school. In Texas, and throughout the Southwest, we have many illegal aliens in our schools that participate in Government programs and no one asks them for a white card or to be enrolled with a tribe or to have a tribal number or registration of any kind. This is the last form of discrimination against a people of America. These children are citizens of the United States, and should be permitted to participate in all of our programs.

The ESA Program that helped integration, we never asked students or their parents to identify the ethnic background of those children when they came to school, we wanted to educate them.

The very point that you brought out in your opening remarks was the fact that the Government owes education to Indian children. We want to educate our children. I am going to stop at this point and let Ms. Ross continue the rest of this, and she does have some positive recommendations that we concur should be made.

Mr. KILDEE. Thank you very much.

Ms. Ross.

Ms. Ross. I am Pat Ross. I am with Moore Public Schools, Moore, OK. I have been with the Moore system 22 years. I have been with Indian education for 12 or 13 years. I happened to migrate in the Chickasaw Nation to Moore 22 years ago. I was labeled right off as the Commanche Indian. I came into a metropolitan area where "there were no visible Indians." I made a promise to myself if there ever came a day I would do something to change the image of the Indian among the non-Indian. And I did not realize when I made that promise, that someday I would be able to work in that direction.

I have worked diligently in trying to help parents secure CDEIB cards. If you were at headquarters, if you knew the tribal politics, then getting the card was relatively easy. But if you moved from "Chickasaw Nation, Cherokee Nations, to the metropolitan area,

first off you have the problem of hoping that you will be accepted among the non-Indians.

The 506 form that was in triplicate copies I remember vividly. I shall always remember. I was a threat to the parents. Many of the parents would not sign it because as you said, it stated that you can perjure yourself. That is a real threat to people. So I am sorry to say that some people take the path of least resistance and in our system 15 years go it was not popular, it was not fashionable to be an Indian, so many people did not express that.

I remember attending a meeting in Norman, OK, where Riley Simmons was asked the question, the woman stood and said, do you think I am an Indian? Mr. Simmons said, most certainly I do think you are an Indian. She said well, it only took me 7 years to prove my Indianness.

I also remember Frank Ryan stating that it took 2 years—and he was a Harvard professor—to prove his Indianness.

I think the important thing is if it took the lady that long to prove her Indianness, and we are working to prove the Indianness of our children, they could be two-thirds through their education in the public school before they could ever be identified on a white card as truly being "Indian."

I have been informed by the Oklahoma Historical Society, by documentation on April 29, 1986, that the testimony that was presented at the time the Dawes Commission rolls were taken, is right now in the process of being filmed in Fort Worth. The historical society has some of the film for Cherokee and Chocktaw Tribes. When they are finished with those two tribes, then they will begin with the remaining three tribes, the Creek, the Chickasaw, and the Seminole.

Sometimes the testimony of these files will add valuable information for families trying to prove their lineage.

It is very difficult for families in metropolitan areas to fill out a family tree without the help of other agencies. Many of our Indian families in the Moore area, and I should qualify Moore, according to Oklahoma City is a bedroom town. That basically means that they have little time, money, energy or expertise to complete the complicated process of securing the CDEIB card for their children to participate in an Indian education program which offers tutoring in the basic subjects and some other cultural aspects.

We have already talked about the CDEIB, what you must have; we have talked about 506 form. I am not going to be redundant. There is another point that I want to stress to the committee, as a point, because my certification is counseling and having been a counselor for many years, having worked with families, making home visits, it was easy for me to move into Indian education. I was already doing that in our school district.

When I visit with families I find many of these children were born out of wedlock. It is an impossibility for those parents to try to prove their lineage. First off, they don't want to touch it. But that child still has a right to the Indian education services in our public school system.

Another problem is our adoptive children. We have 16,000 students in our school system. This past year we had 40 on the list as adoptive. I remember several years ago when the parents commit-

tee was authorized to investigate the Indian community and the children were adopted, the Indian parents committee would sign off that—I still think this is a pretty good idea—when I asked the parents about going to agencies, about them going to agencies, they are reluctant, they will not take that step. I understand why, because I have an adoptive daughter myself. So I am on the front line there.

I think there is another thing. People do not go through life using their full name. They shorten their name. Sometimes they use only part of their name, maybe a first or second name. We have run into this when we would send the information to the tribal agencies.

If we are going to try in Oklahoma to verify the Indianness of the Cherokee children, we are talking about 34,000 Cherokee children. The best that I can understand from the Oklahoma State Department at this time, and I concur with their findings, there are approximately 11,000 of those Cherokee Indians that could not be verified by an enrollment or CDEI card. If we are putting this burden on the tribal agency, it is really asking many of them, because they are very frustrated and many times, when we get the letter from them they will simply stamp this student is not on the roll.

Tribal agencies not only in Oklahoma but across the United States are concerned about the populations that move away from tribal headquarters, and keep in mind, when the tribal headquarters cannot provide a service, many times we have seen a new band or tribe that will be formed. This weakens the power of the mother tribe. This would not be in common to be happening in Oklahoma City, San Francisco, San Diego, in those language matters.

Some people I think thought years ago if you had a card that was the simple way. I have wondered if it could have been based on the fact I belong to many organizations and when I join I get a card. But getting an Indian card is much more difficult, much more complex, because when you become a member of a tribe, that means you must follow those guidelines in order to secure that documentation.

In closing, there are some recommendations that I feel would be worthy of your consideration and I want to reiterate one thing. Going back to adoptees again, because I think it is very important that I leave with this thought. If you are an adopted child, are you really not a citizen of the United States? Are you a second-class citizen? I think that is what we have done to our adopted Indian children.

Another thing that I have been confused about before I gave you the recommendations for some changes, during the time that I have been project director in the Moore Public Schools, the Indian Education Office has had two full time director, interim directors, and currently an acting director. The pendulum of eligibility is about to make the complete swing from the ridiculous to the ridiculous. I am thinking about 12 or 13 years ago when I walked into a classroom and asked how many of you are Indians. There would be a show of a few hands. I would say how many students have ever heard your parents say that you are part Indian? There would be a

few hands. So this was the initial way that we identified the Indian students when the program first started.

In conclusion, I want to leave with you three thoughts that might be possible solutions:

First, that the Indian education moneys may not be allocated on the basis of enrollments, the Indian education funds be allocated on a competitive basis as other Office of Indian Education Programs are funded.

Second, all Indian education programs continue to serve all students who have been recognized as Indians, until they graduate from their school. We should follow the Dawes Commission practice of registering all individuals who have been identified as Indian descent.

Third and last, if eligibility must be established with proof of ethnic heritage, permit the parents to sign a notarized statement this information is accurate and if it can be proven false, they have perjured themselves. this would stop 99.9 percent of the alleged dishonesty of the current 506 forms and still not destroy the current Indian education programs.

I appreciate, Congressman, your inviting us to attend this hearing.

[Prepared statement of Pat Ross and Richard Williams follow:]

PREPARED STATEMENT OF PAT ROSS, DIRECTOR OF STUDENT SERVICES, MOORE PUBLIC SCHOOL, MOORE, OK; RICHARD WILLIAMS, PROFESSOR, UNIVERSITY OF OKLAHOMA, NORMAN, OK

The Indian children of the United States are the concern of educators across the country. Being from Oklahoma our knowledge of the problems related to the Indian education is greatest with Oklahoma Indians. The state of Oklahoma is divided by two telephone area codes, one area code represents the territory allotted to the tribes of Western Oklahoma and the other area code represents the territory allotted to the Five Tribes. The Five Tribes of Eastern Oklahoma migrated to Oklahoma to an area called "Indian Territory" through a process that extended over a twenty year period. The Seminoles were driven from Florida while the Cherokees came from North Carolina, Georgia, Tennessee and Alabama on what was referred to as The Trail of Tears. The Chickasaws and the Choctaws came from Mississippi and Alabama while the Creeks migration was complicated by warfare since some of the bands resisted the process of removal from Alabama and Georgia. Like the Cherokees who suffered over the Trail of Tears losing many infants and elderly along The Trail - the Creeks also suffered bitterly because of the controversy within the tribe over their removal. We must remember these Five Tribes were promised The Indian Territory in Oklahoma.

The Western Tribes had already inhabited the plains of Oklahoma. The U. S. Government did not offer the Western Tribes land. The government just controlled them with their military forces. The Western Tribes had little, if any, reason to keep accurate records of membership. They had little money and no rewards for their clerical efforts.

Treaties were established with the Five Tribes between 1816 and 1828. In 1889 Congress decided to open the Indian Territory of Oklahoma to the non-Indians for homesteads. The settlers moved on this Indian land. What had been given to the Five Tribes was taken away. It is important to remember the attitude of the Indian toward the U. S. Government was affected by the extreme brutality, the bitter suffering of the migration of these tribes to the new territory and the inconsistency of the politics of Washington. In 1906 Congress decided that the Daves Commission rolls would be established for Indian citizenship. Each member of the five Indian tribes were to register with the commission and receive a roll number.

An Indian would go to the Commission, give them his name, his previous residence and his current residence and he was given a roll number. Those Indians who were embittered against the white man's ways refused to enroll, however, they were still native Americans. Those Indians who lived on the "other side of the river" the Arkansas River or the Red River could not be registered. Only Indians in Indian Territory of Oklahoma.

The United States Government was attempting to control the tribes and where they lived. Psychologically they referred to them as The Five Civilized Tribes in an attempt to give them a role model as being peaceful Indians. We have heard before about the individual who did not have rights because he lives on the "wrong side of the river" or the "wrong side of the tracks". This information is not new. It is documented in the archives, in manuscripts of the Oklahoma Historical Society and in the records of the Smithsonian. The current tribal registrar of the Cherokee Nation, Mrs. Dora Mae Watie, states in an open letter, March, 1984:

There are many descendants of Cherokee Indians who settled in the states of Kansas, Missouri, Arkansas and Texas whose blood degree cannot be certified and who cannot qualify for membership in the Cherokee Nation. Unfortunately, their ancestors had separated from their Tribe and were not named on the 1906 final roll of the Cherokee Nation. These persons descended from Cherokee Indians who separated from their tribe and did not maintain tribal affiliation and cannot be certified. Only enrolled members of Cherokee Indians named on the 1906 final roll and their descendants are furnished a Certificate Degree of Indian Blood.

The state of Oklahoma, as other states, has many descendants from the Five Tribes who did not participate in the Daves Commission enrollment. These native Americans who were forced, by a government that did not understand

them, to move from their home lands to a new land, developed an embitterness that lingers today with many native Americans. Eighty acres of land was given as the bribe for enrollment and to remove the guilt for permitting homesteading of the Indian Territory. All Five Tribes, except the Chickasaws, enrolled the Blacks slaves they brought with them as tribal citizens. They were enrolled as Freedmen, while not being native Americans, they were made citizens of the tribe by the Dawes Commission and the Tribal Council. There are many residents in the state of Oklahoma who carry a C.D.I.B. card stamped Freedman because they are citizens of the Tribe however they are not Native Americans.

The United States government decided in 1924 to make the Indians in the United States citizens of the U. S. This did not make it popular to be an Indian. When inter-marriages took place between Indian and non-Indians those individuals had a difficult time being accepted by full bloods of the tribe and by the non-Indian community.

The Oklahoma Indian has been forced to integrate with the non-Indian society. There are no Indian reservations in Oklahoma. Many individuals of Indian descent have been reluctant to establish ties with an Indian tribe because of the discrimination in jobs, in purchasing property and status of the community. While a large number of partial Indian descendants moved quietly through the white man's community, tribal cultures, teachings and beliefs have been maintained by the full bloods and tribal leaders. Even through the 1960's and 1970's it was very unpopular in the state of Oklahoma to claim to be an Indian.

Today, the Office of Indian Education is requesting that all children who are served in the Indian Education program complete an OE Form 506, 8/79. This form is discriminatory in several ways. First, the Native American Indian is the only ethnic group that must prove its ethnic background in the United States. Second, Part 1 states that the natural parent ancestor first degree, the natural grandparent ancestor second degree. The Dawes Commission closed tribal rolls in 1906. School age children whose grandparents were born after 1906 are not eligible unless a C.D.I.B. card has been secured. This means if the grandparent is over eighty and alive you can get the numbers, if the grandparent is dead or under eighty the number is not valid. The rolls were closed before they were born. Third, there are many native Americans of the Five Tribes whose ancestors were not part of the Dawes Commission enrollment. Fourth, there is no provision for the native American who has been adopted.

When Congress passed the Indian Education Bill it was Congress that attached the requirement of tribal identification and proof of citizenship as a requirement for receiving funds. It would be impossible to interview a United States Representative or Senator that would want to discriminate against an American citizen in any manner. However, in following the traditions, precedent, and political structures of the past, the United States government has broken all of the treaties with the Indian Nations and is continuing to treat them as second class citizens—a very discriminatory act. No other citizens, other than the native Americans, must carry a white card or have it photostated and be on record at a U. S. free public education school.

The Bilingual Education Program is available to all students who are enrolled in school, even if those were not an American citizen. The Emergency School Aid Act monies that were used to assist schools in integration never asked the student or their parent to prove their ethnic background.

Can we free the Native American people? In 1924, did we really make them citizens of the United States or do we want to continue to treat them as foreigners?? The U. S. Government requires non-citizens to register with the immigration office and now they are requiring the American Indian to register on Tribal Rolls or be recognized by the Tribe. This is America, the Land of the Free!!!

It is not difficult to secure a C.D.I.B. card for children of parents who are full-blood, live close to the Tribal Headquarters and understand the current politics of the Tribe. However, when an Indian has moved away from the Tribe, does not understand the current politics, the process of obtaining a C.D.I.B. card can become a very long and drawn out process. A Harvard professor who became the Director of Indian Education in the Office of Education, Frank Ryan, said it took him over two years to obtain a C.D.I.B. card. When Riley

Simmons was in the state of Oklahoma for a conference concerning this problem, an Indian lady from Idabel, Oklahoma, asked Mr. Simmons before the group if he considered her an Indian? His response was "I most certainly do." She said it took her seven years to verify her Indianness. If this were the case, a child could be through two-thirds of his public school education program before being verified as an Indian. This is discrimination.

We have been informed by the Oklahoma Historical Society, April 29, 1986, that the testimony that was presented at the time the Daves Commission rolls were taken is in the process of being filmed in Fort Worth. The Historical Society has some of this film for the Cherokee and Choctaw Tribes and when Fort Worth completes these two tribes, it will then continue with the remaining three tribes, the Creek, the Chickasaw, and the Seminole. Sometimes the testimony of these files contain added valuable family information in tracing Indian ancestors. It is difficult to complete family tree lineage without complete files and available documentation for the applicants.

Most Indian families in the state of Oklahoma do not have the time, money, energy and/or the expertise to complete the complicated process of securing a C.D.I.B. card for their children to participate in an Indian Education Program at school that provides tutoring in the basic subjects. To secure a C.D.I.B. card the first step is to complete a family tree, tracing the lineage from the child to the individual whose name appears on the original Daves Roll. We have found in helping families prove their Indianness that a grandmother or grandfather is very helpful in giving us names in the lineage. This process is not always easy and is complicated with the integration into metropolitan area. An example, a non-Indian woman marries a full-blood, has a son, the son is fifty percent Indian, the parents divorce, the mother remarries a non-Indian. In Oklahoma, if she contacts her ex-husband there might be a shooting, therefore, no effort is made to secure a C.D.I.B. white card to participate in the school program called Indian Education. The process is also complicated when a child is born out-of-wedlock. Questions related to family trees and lineage become an embarrassment. Are these children citizens of the United States? Yes, but truly second class citizens. They do not have a white card--they cannot participate. When the family lineage is traced it is at that point that birth certificates, marriage licenses and death certificates must all be secured and documented before sending the application to the Tribal Agencies for verification. Maiden names must be established for women, any change of name must have full documentation and be notarized. For example, if a woman's name was Mary Patricia and she went by Patricia and Patricia appeared on a document without Mary, someone her age would have to verify with a notary this is one and the same person. This is almost impossible and very time consuming when possible for an individual who has moved any distance from the Tribal Agency.

To register all of the native American children in Oklahoma would provide a great burden upon the Tribal Agencies financially, and in man power. It is estimated that possibly one-third of the children currently recognized as native Americans do not have roll numbers or C.D.I.B. cards in the state of Oklahoma. The State Department of Education of Oklahoma reports there are approximately 34,000 Cherokee children in Oklahoma Schools. If one-third of these children or 11,000 need to be registered with the Cherokee Tribe, their Tribal Agency is currently understaffed to handle this burden. Many of the difficult cases will simply be stamped, "roll numbers not available for these individuals", because of an overworked staff, a frustrated staff or general complacency. The burden of proof remains with the applicant.

Tribal Agencies, not only in Oklahoma, but across the United States are concerned about large populations away from Tribal Headquarters. When the Tribal Headquarters cannot provide services for their people there is always a fear a new band of the Tribe will be formed. This weakens the power of the Mother Tribe. Metropolitan communities such as Oklahoma City, San Francisco, and San Diego have similar problems securing tribal registration or C.D.I.B. cards for their children. Being a member of an Indian Nation is different than being a member of a club or organization where you pay your dues and you receive a membership card. Becoming a member of a Tribal nation means following the guidelines that the Indian Agency has established.

We have been requested when a child's parents say the child is adopted that we get documentation from the adoptive agency that the child is Indian. This process is also discriminatory in that many children do not know they are

adopted or illegitimate. Their brothers and sisters do not know they are adopted and their parents do not want them to know. When we request from parents the name of the adoption agency and ask them to contact the agency many fears arise in the minds of the parents and the general response is "I don't think I want to do that." Are these children U. S. Citizens?? ... first or second class citizens??

The Indian Education Program, as we currently know it, has had two full time directors, interim directors and currently acting director. The pendulum of eligibility is about to make the complete swing from the ridiculous to the ridiculous. When the Indian Education Program was first introduced we went to the classrooms and asked the children "How many of you are Indians?" When no one raised his hand, another question was asked, "How many of you have ever heard your parents say that you are part Indian?" A few hands went up. We are going to form an Indian band and have a concert, if you are an Indian, you can play in the band, some more hands went up. If we have a good concert everyone in the band will get an ice cream cone. Now everybody is an Indian. That was the first Indian count in many states and that was ridiculous.

The Office of Indian Education has not been consistent with who is an Indian. At this point, after doing an extensive study of how to define an Indian, the Office of Indian Education is still at a loss. In order to pass the buck for the inept leadership they possess they are requesting that the tribes determine who their members are. The Indian nations are independent, sovereign, and self-governing agencies. Because they have chosen to use the C.D.I.B. card for enrollment, this should have nothing to do with school practices and the funding of Indian Education Programs in the United States of America. Requiring Indians to carry white cards or have them on record at the school is also ridiculous. One third of the Indian children currently in Indian Education Programs in Oklahoma would not be permitted to continue in those programs. We have already documented that the tribes know many of their people cannot qualify as members because of the Dawes Commission enrollment process.

A possible solution:

1. That the Indian Education monies not be allocated on the basis of enrollment. The Indian Education funds be allocated on a competitive basis as other Office of Education programs are funded.
2. All Indian Education Programs continue to serve all students who have been recognized as Indians until they graduate from their school. We should follow the Dawes Commission practice of registering all individuals who have been identified as Indian descent.
3. If eligibility must be established with proof of ethnic heritage permit the parent to sign a notarized statement this information is accurate and if it can be proven false they have purged themselves. This would stop 99.9 percent of the alleged dishonesty of the current 506 forms and NOT destroy the current Indian Education Programs.

Mr. KILDEE. Thank you very much, Ms. Ross and Mr. Williams. Our last witness on this panel is someone who has appeared before today. Glad to have her back again. Ruth Dial Woods.

STATEMENT OF RUTH DIAL WOODS, ASSISTANT SUPERINTENDENT, DIVISION OF COMPENSATORY EDUCATION, ROBERSON COUNTY BOARD OF EDUCATION, LUMBERTON, NC

Ms. Woods. Thank you again for the opportunity. I believe some 5 or 6 years ago I was here complaining about the OE-506 form. We ended up inheriting that form, and I guess I have an update on what has happened with it and some continuing concerns about it.

As you know, with the enactment of the Indian Education Act, the U.S. Congress recognized and reaffirmed a trust responsibility to American Indians and Alaskan Natives across this country. As part of that infamous 1980 definition of Indian study, a particular report was completed which addressed the legislative intent of the act. And again out of that summary, which was at the mandate of the Congress, was clarification of the legislative intent and a policy of inclusiveness.

Since 1972, title IV Indian Education Programs across this country have conscientiously assured that program compliance was being met with the certification of students. The problem has not been in the abuse of OE-506 forms or in practices at the local level. The problems that we have experienced has been the continuing and changing of administrative interpretations and guidelines to the projects offered by the Office of Indian Programs. Many times those interpretations have been contrary to the legislative intent of the act, as well as contradictory to the policy of inclusiveness.

Again, as part of the definition of Indian study, the OE-506 form, which particularly called for proof of membership, was a data collection instrument that caught the fancy of the administrators of that office, because I had the privilege to sit with the National Advisory Council on Indian Education at the time that they were considering the adoption for recommendation to the Secretary of the newly revised OE-506 form, but it became a way to strengthen administrative interpretation and to issue new guidelines which was thought to cut down on the numbers of Indian children across this country being served by the project.

It is unfortunate we testified against the instrument, we argued with the program specialist, but we finally received the form, and to my knowledge we have not, projects have not received copies of that form since that initial study. The forms today are xeroxed copies of that old triplicate form. I know that we have it, and I am assuming that other projects have. That was one run for the definition of Indian studies; however, 5 or 6 years later, we are continuing to use that form particularly designed for data collection for a particular study.

At the time that the new form was issued, we sought clarification with the Department of Education through the Office of Indian Programs as to the interpretation of the numerical identifiers, representing State-recognized Indians who historically and traditionally have not had tribal roles and have not had treaty responsibilities with the Federal Government; we began to ask what can

we do in terms of numerical identifiers? Historically our children were enrolled in public schools by the presentation of a birth certificate. We sought clarification from the office, from the Administrator at that time, Dr. Gerald Gipp, and received a response from the office that birth certificates were admissible and numerical identifiers.

Since January 1981, 22 of the 25 projects in North Carolina have certified their children by State validated birth certificates and pending review of the parent committee. Last fall, in November, program specialists advised us no longer would birth certificates be acceptable for certifying our children in North Carolina. Again, through the State commission of Indian affairs, we sought clarification with the office, and again by correspondence of Dr. Frank Ryan, he indicated that by a look at the historical and legislative history of State recognition of the Indians in North Carolina, that birth certificates were secondary evidence, however, encouraged tribal enrollment.

In January, I proceeded in negotiations with Lumbee Regional Association and the Tuscarora Tribe, which has been declared an eligible Indian organization for title IV programs and services. Lumbee Regional Development Association, in 1980, 8 years after the Education Act, began a tribal enrollment practice strictly for the purpose of seeking Federal acknowledgment. To date, we have some 8,700 students in our school district, only 2,000 of those students are tribally enrolled.

We have also 1,000 students who affiliate with the Tuscarora Tribe. The agency has asked us to assist in tribal enrollment in terms of taking applications, the Office of Indian Programs has advised us that would be a conflict of interest.

My concern, as administrator, is that since 1977, and I have included for your review copies of the site visits and program audits by the Office of Indian Programs, which indicate that we are in compliance, that birth certificates have been acceptable and that our 506 forms are in order. Now, again, through the administrative guidance we hear of the numerical identifiers again, yet birth certificates will not be accepted. I am a little frustrated, as I always have been, but, you know, to have audit reports that say, "Yes, you are in compliance, come back, the rules are changed in mid stream," and to be in a position in which I do not have any problems in consultation with the local Indian organization, whose priority is tribal enrollment for Federal acknowledgment and not necessarily a historical and official practice of the Indian community which our project serves.

We have gone so far as to seek further consultation with the State attorney general, who has interpreted for us that the State legislation granting State recognition of Indians in North Carolina has to do with place of residence and the community in which they live and did not clarify membership other than to designate the groups by place of residence as to the recognition.

There are some official practices in place in North Carolina. Only one service is provided to Indians because of their status of Indians in North Carolina, and that is the North Carolina legislative student grant for Indians in higher education. That is something relatively new, which has been enacted in the last 3 years

and which was the outgrowth of the failure to recognize a responsibility to Indians and the minority principal's plan for higher education in North Carolina.

That particular definition talks again about cultural edification, place of residence, and that is the only official policy because that is the only program for Indians because there are Indians in North Carolina. If we had 100 percent participation of all Indian parents in our school district, the tribal organization does not have sufficient resources to enroll the 7,700 Indian students who do not have tribal enrollment numbers.

The organization at the present time is seeking assistance through the State legislature for financial assistance, and it was my understanding on Friday that they will possibly receive \$50,000 out of what is called pork barrel money in North Carolina to assist them in tribal enrollment efforts.

I might also add that the latest information that we have from the Bureau of Indian Affairs is that if the Lumbee petition were filed within the next 30 days, that would work for us that they have—the logs that they have on petitions, that we could expect that petition to be reviewed sometime in about 15 years. That does very little to my certification of those 7,700 students in Robeson County.

Mr. Chairman, we ask for recognition of our diversity and the reaffirmation of the trust responsibility to all American Indian and Alaskan Natives. By ensuring that the responsibility of certification of Indian students rests with the school districts and the title IV parent committees in consultation with the Indian communities, and we ask that in this regulatory process that specific language and guidance be given to those Indian tribes, Indian districts receiving Indian students who are not federally recognized and who have a historical legacy of Indian dissent, but who are not involved in tribal enrollment processes.

We hope that in any future rulemaking that the uniqueness and diversity of all American Indians and Alaskan Natives be taken into account. It appears there are times we are trying to put all the eggs in one basket, and Indians do not come in one basket. Part of our uniqueness is that we do have differences because of where we live, because of our tribes and because of the differences in our culture.

The OE-506, as presently constituted, provides an option for that kind of diversity, but until we can get the Congress to direct the Department of Education that the regulatory process must address that diversity, we cannot truthfully fulfill our mission to all of the American Indian and Alaskan Natives in this country who are eligible for this program as the Congress intended.

Birth certificates and school records are official documents, both of which are required for enrollment in the public schools. Since tribes utilized birth records, acceptance of these official documents should be adequate for LEA certification and should be added to the list of eligibility documents, together with tribal enrollment numbers, allotment numbers and other identifiers, if the new regulations are promulgated. This action, Mr. Chairman, alone would enable all local educational agencies to proceed with the mission of

educating Indian youth and establish a reaffirmation of the legislative intent of the act.

Thank you.

[Prepared statement of Ruth Dial Woods follows:]

**PREPARED STATEMENT OF RUTH DIAL WOODS, ASSISTANT SUPERINTENDENT, ROBESON
COUNTY BOARD OF EDUCATION, LUMBERTON, NC**

The United States Congress recognized and reaffirmed a trust responsibility for the education of American Indian and Alaskan Natives in the enactment of P.L. 92-318 on June 23, 1972 entitled the Indian Education Act, and reaffirmed this responsibility in the 1978 Education Amendments of P.L. 95-561 on November 1, 1978. As part of the "Definition of Indian Study" mandated by the Congress and completed in June, 1980, a report clarified:

- a. The legislative intent of the Indian Education Act provides for an inclusive policy of educational services for all American Indian and Alaskan Natives;
- b. An affirmation and declaration of a federal trust responsibility to all American Indians and Alaskan Natives regardless of their residence on or off reservations and including urban and rural American Indian and Alaskan Natives who were not eligible for other federal programs and services because of their status.

Local educational agencies since 1972 have conscientiously worked to ensure that all areas of program compliance were met and the certification of Indian students has been the responsibility of the LEAs in consultation with Indian parents, tribes and organizations. Certification of eligibility has created problems in program administration only when departmental administrative guidelines have exceeded the statutory intent in attempting to define "Indian" and to establish regulatory procedures which are inconsistent with the legislative intent and policy of inclusiveness. These guidelines have historically been ambiguous and constantly changing. From 1972 until January, 1980, departmental requirements included basic student data and a signed parental affidavit for review of the mandated Indian parent committee. However, in 1980, during the initial planning for the Congressional mandate "Definition of Indian Study" a data collection instrument solely for data collection was designed and approved by the Secretary. This data collection instrument was perceived as a tool for certification of eligibility by the administration of the Office of Indian Education, presented for review and approval of the National Advisory Council on Indian Education, and adopted as a revised OE 506 certification form to be completed and utilized for the project application process by January, 1980. This administrative action required complete re-certification of all American Indian and Alaskan Native students served by LEAs across the nation. Much controversy arose as the Office of Indian Education advised Grantees that the new form was required for the Definition of Indian Study, and departmental officials within the Office of the Secretary denied that the revised OE 506 forms were a requirement. Nevertheless, Grantees were advised through technical assistance conferences that the re-certification was to be completed for FY80 funding although the forms were not available for distribution at that time. In late September, with the forms still not distributed, projects were advised that the OE 506 forms would be required for FY 81 funding, however, copies necessary for the "Definition of Indian Study" had been due for submittal to the Assistant Secretary's Office by May 15, 1980.

The fact that the "Definition of Indian Study" had been Congressionally mandated and that future funding was deemed dependent upon such re-certification, many Title IV Part A projects concentrated on this process of re-certification which left little time for concentration on meaningful program services or the meeting of project objectives.

The adoption and issuance of the revised OE 506 forms resulted in the issuance of new administrative guidelines promulgated by the Office of Indian Education requiring numerical identifiers for all students as a condition for certifying eligibility. These administrative guidelines were completely irresponsible and unresponsive to the legislative intent to recognize the eligibility of all American Indian and Alaskan Native students who were not affiliated with Indian tribes, bands and groups who did not maintain tribal rools or other procedures for issuance of "numerical identifiers," particularly urban and rural non-reservation and state-recognized Indian students who were eligible for Title IV programs and services.

In North Carolina, twenty-two of the twenty-five grantees serve state-recognized Indian student populations. By correspondence of Superintendent Purnell Swett dated October 25, 1980 (Reference: Correspondence Superintendent Swett), attachment A, our LEA sought clarification of "proof of membership" as required for the OE 506 form and an administrative ruling on the acceptance of birth certificate numbers as "numerical identifier." In November, our school district received correspondence giving approval to our policy of using birth certificates as a membership identifier since birth certificates were the common practice of the state of North Carolina in identifying Indians and utilized for enrollment in the public schools (Reference: Correspondence - Judy Baker for Gerald Gipp), attachment B. Later, all grantees received an administrative clarification extending the types of documentation beyond numerical identifiers which could be utilized to certify Indian student eligibility (Reference: Memorandum of Gerald Gipp dated September 28, 1979), attachment C. As a result of this approval, all North Carolina grantees proceeded with re-certification and documentation of eligibility using state birth certificates. This practice has been utilized since January, 1981.

OIE program specialists at a technical assistance conference in November 1985 informed North Carolina grantees that birth certificates would no longer be acceptable as proof of membership for certification of eligibility. This interpretation was further advanced in special instructions included with FY86 project application packets. (Reference: Dear Applicant Letter), attachment D. Once again, we enlisted the North Carolina State Commission of Indian Affairs in seeking clarification (Reference: Correspondence A. Bruce Jones), attachment E, and received an administrative response indicating that based on historical and legislative practices, birth certificates could be utilized for certification, however, it would be advisable to seek tribal certification/enrollment to document membership (Reference Correspondence - Dr. Frank Ryan dated December 20, 1985), attachment F.

In April of this year, grantees were notified that an extension of the FY87 project application process would be granted until May 22, 1986 for the completion of OE 506 forms consistent with special instructions restated from the FY86 project application guidelines - an enrollment number, where applicable, or certification by the individual's membership by the tribe, band, or organized group of Indians. As in the past, these administrative directives exceed statutory and congressional legislative intent by stressing enrollment numbers and providing no guidance to grantees for certifying the eligibility of American Indian and Alaskan Native students who affiliate with tribes, bands and groups who have not historically and traditionally utilized tribal rolls for identifying their members.

The project which I administer serves 9000+ Indian students. 8,654 have affirmed their affiliation as state recognized Lumbees; (2,015 have enrollment numbers). 121 have affirmed their affiliation as Tuscarora, a state chartered Indian organization which has been declared as an eligible grantee for Title IV programs and services by the Office of Indian programs. The Lumbee and Tuscarora students have all been certified by birth certificates and a trace of the state legislative history. OE 506 forms are reviewed and approved by an 38 member, all Indian, Parent Committee elected by ballot and representative of all Indian communities in the school district.

In 1980, Lumbee Regional Development Association, the Lumbee Tribal Agency began a tribal enrollment program which requires birth certificates to trace descendency for the purpose of seeking federal acknowledgement by the Bureau of Indian Affairs. A recent matching of the LEA's 506 computerized list with the Agency's Tribal Enrollment Office revealed that 1,969 Lumbee students are enrolled and 6,685 are not enrolled but are considered members of the Lumbee by state legislation. The Recognition Committee of the Agency has refused to certify the Lumbee students for Title IV purposes and has sought the assistance of the LEA Board and project staff in taking applications for tribal enrollment in order to assist them in preparing a tribal roll for petitioning the Bureau of Indian Affairs. The Office of Indian Programs has apprised the LEA of the potential for conflict of interest in utilizing project staff and resources for tribal enrollment.

We have further sought clarification by the North Carolina State Attorney General who has advised that North Carolina state legislation does not speak to membership, rather, recognizes Indian tribes by reference to location and residence as stated in the legislation. The State of North Carolina does not provide for any services to Indians because of their status as Indians with the exception of the Native American Legislative Student Grant. (Reference: Rules and Regulations), attachment G The official state definition for eligibility for these services is:

"An individual who maintains cultural identification as an American Indian through membership in an Indian tribe recognized by the State of North Carolina or by the federal government or through other tribal affiliation or community recognition."

Satisfaction of this definition shall be established in the following manner:

- a. For a student enrolled in any constituent institution of the University prior to making application for an AISLGP grant previous identification of the student as an American Indian in the records of that institution shall cause the student to be deemed an American Indian for purposes of the AISLGP, subject to b., below;
- b. For a previously enrolled student whose prior institutional identification as an American Indian is questioned and for any other applicant for an AISLGP grant who has not previously been identified by the institution as an American Indian, the student shall supply information to support a determination of the existence of the student's qualification as an American Indian under the definition set forth above.

My dilemma as a project administrator is that Robeson County certified 9000 + 506 forms prior to 1980; re-certified 9,000 in accordance with administrative directives issued in 1980, and now, there is a new administrative interpretation that requires tribal enrollment numbers from the tribal agency which has implemented a tribal enrollment process for purpose of seeking federal acknowledgement and which is neither a historical precedent or official state practice for state recognized Indians.

If we had 100% participation of all Indian parents, the tribal organization has neither sufficient staff nor resources to enroll the 7700 Indian students who are not currently enrolled. Yet, on OIE project site monitoring visits, we have received approval of our certification process.

The major problem which confronts all Title IV grantees is the constant and repetitive changes in administrative interpretation which attempts to put all Indians into one basket, and we do not come that way. We are diverse peoples of diverse tribes, geographically located across this nation, in all states with diverse policies, some with tribal structures, others without, yet we all, regardless of tribe, location or customs, aspire to quality educational services, and indepth studies have reaffirmed that the legislative intent of the Title IV Indian Education Act was to assist us all in this pursuit.

Mr. Chairman, we ask for recognition of our diversity and the reaffirmation of the trust responsibility to all American Indian and Alaskan Natives by ensuring that the responsibility of certification of student rests with LEAs who in consultation with the Title IV Parent Committee will provide documented evidence of eligibility based on whatever process is acceptable to the LEA and the Indian community, and in accordance with historical practices of the Indian tribes, bands and groups and official state practices for identifying the citizenry of the respective states. We further request that this Committee and the Congress direct the appropriate regulatory officials to address, with specificity and clarity, in any future rule-making the unique and diverse methods for documenting eligibility in compliance with the Congressional legislative intent and policy inclusiveness.

To expect effective delivery of an Indian Education programs and services in the public schools from any source other than the Department of Education is wholly unrealistic. The Department of Education, state educational agencies and local educational agencies comprise the matrix for the control of public education, and it is in public education institutions that the sizeable majority of Indian children and adults are seeking quality education. Therefore, current reappraisals of this policy are not realistic in terms of the target population for whom Title IV Indian Education programs were conceived and mandated by the U.S. Congress and threatens to violate the policy of comparable services through equal educational opportunities.

Just because one program planner designing a data collection instrument had a stroke of the pen and included "proof of membership" does not mean that all of us have membership rolls and rosters. However, there are other means by which we identify our people, and we ask that we be given the right to utilize our historical and traditional practices in doing so.

The OE 506 as presently constituted provides that option, however, the conflict has arisen from administrative guidance and directives which infer that "proof of membership" must be documented by some type of numerical identifier. As the new regulations are developed, we hope that this conflict can be resolved by clarity of specific requirements which address the diversity of our people as well as the diversity of our practices in identifying our specific Indian populations.

Birth certificates and school records are official documents, both of which are required in the enrollment process by LEAs. Since tribes utilized birth records, acceptance of these official documents should be adequate for LEA certification and should be added to the list of eligibility documentation together with tribal enrollment numbers, allotment numbers, and other numerical identifiers as the new regulations are promulgated. This action, alone, would enable all LEAs to proceed with the mission of educating Indian youth and establish a reaffirmation of the legislative intent of the Indian Education Act.

Robeson County Board of Education

P. O. BOX 1228
LUMBERTON, NORTH CAROLINA
Zip Code 28358

ATTACH

OFFICE OF SUPERINTENDENT

October 25, 1980

Dr. Gerald Gipp
Assistant Deputy Commissioner
Office of Indian Education
Room 2177 FOB 6
400 Maryland Avenue S.W.
Washington, D.C. 20202

Dear Dr. Gipp:

In discussing the "proof of membership" of Indian students relative to the OE 506 Indian Student Certification at the recent Title IV Part A Workshops held in Dallas, our Title IV Part A Project Staff was informed that birth certificates could not be considered as meeting the requirements of a completed OE 506 form in compliance with the law.

In reviewing your correspondence to LEA Superintendents of January 29, 1980, page 3 with regard to membership data for tribes, bands or other organized groups lists acceptable options in Items (1) and (2). After much deliberation and consultation with the Title IV Part A Project Committee, the Title IV Part A Project Staff, tribal leaders and tribal organizations, we instituted a process for certifying eligible Indian students as follows:

Re: Lumbee Tribe

Indian students who designated their tribal affiliation as Lumbee were certified on the following basis:

- (a) Certified birth certificate recording the child or one or both of his/her parents as Indian and as having been born in Robeson County or outside of Robeson County while the parent was residing in Robeson County;
- (b) Reference to citations of law in the North Carolina General Statutes, Chapter 71, which states:

Chapter 71-1 - Cherokee Indians of Robeson County; rights and privileges. The persons residing in Robeson, Richmond, and Sampson counties, who have heretofore been known as "Croatan Indians" or "Indians of Robeson County," and by the name shall be entitled to all the rights and privileges heretofore or hereafter conferred, by any law or laws of the State of North Carolina, upon the Indians heretofore known as the "Croatan Indians" or "Indians of Robeson County." In all laws enacted by the General Assembly of North Carolina relating to said Indians subsequent to the enactment of said Chapter 51 of the Laws of 1885, the words "Croatan Indians" and "Indians of Robeson County" are stricken out and the words "Cherokee Indians of Robeson County" inserted in lieu thereof.

Chapter 71-5. Lumbee Tribe of North Carolina; rights, privileges immunities, obligations and duties. The Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County and claiming joint descent from remnants of early American Colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, shall, from and after April 20, 1953, be designated and officially recognized as Lumbee Tribe of North Carolina and shall continue to enjoy all rights, privileges and immunities enjoyed by them as citizens of the State as now provided by law, and shall continue to be subject to all the obligations and duties of citizens under the law.

It should be noted that these General Statutes include legislation enactment by the North Carolina General Assembly in 1885, 1887, 1911 and 1913 and provide for tribal identification in the absence of formal tribal membership rolls and are to be construed as having the support, endorsement and approval of the Indian community in Robeson County since this Indian community did in fact lobby for the passage of such legislation and did in fact approve this method of identification of tribal membership.

It is upon this legislative history that the identification of Indian people have been made via certified birth certificates in the State of North Carolina since the early 1900's and did in fact after 1911 so designate Indians born in Robeson County as "Cherokee Indian."

(c) Recognition of the Indian student as Indian in the community in which he/she lives and by review and subsequent approval of the Title IV Part A Parent Committee Subcommittees by school district in which the Indian students live and attend school;

(d) Previous school records of Indian students to be certified;

(e) Traditional Indian family names supplemented by Title IV Part A Parent Committee review and subsequent approval for certification;

(f) Reference to 1956 Act of Congress recognizing Lumbee Indians of North Carolina and General Counsel and OMB rulings on eligibility of Lumbee Indians for federal programs and services;

(g) Eligibility for meeting criteria for tribal enrollment established by Lumbee Regional Development Association at the option of the student and his/her parents.

In view of these considerations for eligibility, it was our consensus that the certified birth certificate was directly based on historical precedent and state legislative history and process for identified Indian students for the provision of free public education in the State of North Carolina.

Dr. Gerald Gipp

Page 3

RE: TUSCARORA AND CHEROKEE TRIBAL AFFILIATIONS

Indian students who designated their tribal affiliation as either Tuscarora or Cherokee were certified on the following basis:

- (a) Certified birth certificates (same as Lumbee);
- (b) Reference to State Legislative history relative to state recognition and official designation as Cherokee Indian and descendency of Indian students from those Indian persons recognized by the state in historical legislation of 1885, 1887, 1911 and 1913 as proof of descendency from state-recognized Indian people;
- (c) (d) and (e) Same as Lumbee criteria for certification of eligibility;
- (f) Eligible for meeting criteria for tribal enrollment at the option of the Indian student and/or his/her parents as established by "organized group of Indians" whose descendency can be traced to Indian tribes, bands and groups officially designated and recognized in previous N.C. State Legislation of 1885, 1887 and 1911 and of "organized group of Indians" who are petitioning for federal acknowledgement and some of whose members were granted federal recognition as a result of the Maynor vs Morton 510-SF-2D-1254 (1975) case in which the Secretary of Interior did, in fact, recognize Indians in Robeson County from whom some of these children do claim descendency.

RE: Other Indian Tribes, Bands and Organized Groups

The seventeen (17) Indian students of Sioux, Oneida, Apache and Creek descendency have either been certified with appropriate numerical identifiers or their documenting records are currently being requested with the exception of adopted Indian children whose OE 506 forms are attaching supporting statements from the adoptive parents.

In order to better assist you in preliminary review of the results of these procedures and in determining whether or not they satisfactorily comply with the OIE requirements, I have enclosed copies of completed OE 506 forms in each of these procedural categories.

To date, we have certified 8,522 Indian students for Title IV Part A services of a potential 8,726 Indian students identified last Spring prior to submittal of FY 80 Project Application. These 8,522 Indian students have been certified for eligibility in the above manner and these procedures were established in good faith and in accordance with our interpretation of the above referred to correspondence from your office.

Dr. Gerald Gipp

Page 4

In view of the fact that we can anticipate an OIE audit of the Title IV Part A Project within the next twenty-four months as well as the need to assess our status relative to the January 1, 1981 deadline for completion of OE 506 forms for subsequent funding, we are requesting your review and assessment of our procedures for certification of eligibility and our status relative to compliance in this regard.

An expeditious reply with any further clarification will be most appreciated as we are acutely aware of the vital importance of this matter and the implications of any necessary changes in our procedures within the designated time constraints.

Sincerely,

A handwritten signature in cursive script, appearing to read "Purnell Swett".

Purnell Swett, Superintendent

Enclosures



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

ATTACHMENT B

NOV 20 1980

Mrs. Ruth Woods
Robeson County Board of Education
P. O. Box 1328
Lumberton, North Carolina 28358

Dear Mrs. Woods:

First let me apologize for the delay in responding to your letter. I have been out on sick leave; consequently, the correspondence has stacked up.

The policy, that birth certificates may be used as a membership identifier where this is the common practice of the area has not been changed. The correspondence of January 29, 1980, is still in effect.

As per your discussion with Dr. Glipp and myself, the student eligibility forms that use this type of certification are acceptable.

If you need further clarification, please feel free to contact us. I hope all is well with you and your project.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Judy".

Judy K. Baker
Acting Associate Deputy
Assistant Secretary
Office of Indian Education



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF EDUCATION
WASHINGTON, D.C. 20202

SEPT. 28, 1979

Dear Grantee:

This letter is to provide you with a status report on the Indian Student Certification (506) form used to establish student eligibility under the Indian Education Act, Part A, entitlement program for local educational agencies. The form is used to determine the number of Indian students enrolled in the public schools of your district, and, consequently, the amount of funds to which the district is entitled.

Because the Education Amendments of 1978, P.L. 95-561, require certain information to be requested on the form, we have had to substantially revise the form. The process of drafting, administratively clearing, and printing the revised form is taking far longer than we had hoped. Consequently, we do not expect to mail the revised forms to you until approximately November, 1979.

In order to ensure that you have sufficient time to distribute and collect the forms, I have decided not to require the use of the revised forms until the fiscal year 1981 grants process. However, when the new forms are available, we will ask each district to distribute and collect them as soon as possible. It will be particularly important for the district to have on file a completed form (as revised) for each child whose eligibility is being established for the first time this year.

For the fiscal year 1980 grants process, for which applications are due in early Spring, 1979, please notify us, in writing, of the correct count by October 31, 1979.

Please be reminded that it is the responsibility of the school district to ensure that each child included in its count is an Indian as defined in the Indian Education Act. It is also the responsibility of the district to ensure that it has on file a current 506 form, or other document that has been approved by this Office, for each child included in its count. The Indian Education Act provides that any falsification of information provided on the district's application for funds under Part A is punishable by impoundment of unused funds and in ineligibility for receiving any future entitlements under the Act. Information provided by a school district on the number of Indian students enrolled in its schools is considered to be an integral part of its application.

The revised 506 form will also be used, for the coming year only, in conjunction with a study and analysis of the definition of Indian being carried out by the Assistant Secretary for Education. This effort is required by the Education Amendments of 1978. It will be most helpful if completed forms are sent in to the Assistant Secretary by May 15, 1980. Further instructions on this process will be sent to you at a later date.

If you have any questions about the items discussed in this letter, please feel free to call your program specialist. I appreciate your cooperation in this entire process.

Sincerely,


for Gerald E. Gipp
Deputy Commissioner
Office of Indian Education



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

ATTACHMENT D

Dear Applicant:

The enclosed packet contains information necessary for the submission of applications for Part A of the Indian Education Act.

We urge you to review carefully the instructions contained in the letter and the application packet, the requirements contained in the closing date notice, the Indian Education Act Regulations, and the Education Department General Administrative Regulations (EDGAR). All of these documents are included in this packet except the EDGAR. If you need a copy of the EDGAR, please contact the Grants and Contracts Service, Management Support Branch, 400 Maryland Avenue, S.W., Room 3635, ROB-3, Washington, D.C. 20202, or call (202) 732-2504.

Special Instructions:

- o The eligibility requirements as set forth in Section 453 of the Indian Education Act and Section 1148 of the Education Amendments of 1978 provide that the Department of Education establish eligibility by requiring districts to keep on file completed Indian Student Certification forms (ED Form 506).

Based on the statutory requirements, each school district must maintain a completed Indian Student Certification form (ED Form 506) for each child claimed for entitlement under Part A.

Your attention is called to item Part I-C of the form in which the individual's membership number is required. The Department will accept the enrollment number of the individual or, where permitted under the statute, the parent or grandparent. If the enrollment number is not applicable, the Department will accept evidence of recognition by the Secretary of the Interior, such as by Certificate of Degree of Indian Blood, or certification of the individual's membership by the tribe, band, or other organized group of Indians.

The information on the 506 form is required under Section 1148 of Public Law 95-561 and must be completed.

The Department wishes to meet its statutory responsibilities and ensure that only eligible students are being counted and served. Therefore, when the Department finds that a school district has not provided complete information for each child claimed for Part A funding, it will notify the district that the district will be given 30 days to provide missing documentation to substantiate its claims.

If the district fails to provide satisfactory documentation of entitlement, the Department will take appropriate administrative action to ensure compliance, including reducing a district's grant award.

Al

Page 2 - Dear Applicant

- o Projects supported by grants under this program will be for a period of 12 months.
- o The signature on the face page of the application certifies that the applicant has complied or will comply with the assurances required under this program. One of these assurances is that the applicant will adopt effective procedures, including provisions for appropriate objective measurement of educational achievement, to evaluate at least annually the effectiveness of the proposed project in meeting the special educational needs of Indian students. The Indian Education Programs office will be reviewing applications with this assurance in mind.
- o Section 251.40 of the regulations governing this program set forth the requirement for maintenance of fiscal effort by local educational agencies in order to be eligible to receive a grant. This section is being revised to reflect changes in this requirement as a result of the passage of P.L. 98-396 which reduced from 100 percent to 90 percent the combined fiscal effort of an LEA and the State that must be maintained by an LEA. It also provided authority for the Secretary to waive the requirement for exceptional circumstances for one year only. Final regulations reflecting these changes are scheduled for publication this fall.
- o Applicants which are governmental entities are subject to Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The requirements under the Executive Order are described in the closing date notice which is contained in this packet.

Please submit an original and two copies of your application to the U.S. Department of Education, Application Control Center, Attention: 84.060A, Washington, D.C. 20202. In addition, we recommend that you send a copy of the application to the Indian representative in your State Department of Education.

Please pay special attention to the instructions for mailing the application package. Do not send applications to the Indian Education Programs or to the Secretary. All applications must be addressed to:


Department of Education
Application Control Center
Attention: CFDA 84.060A
Washington, D.C. 20202

Page 3 - Dear Applicant

The deadline for submission of applications is February 13, 1986. The U.S. Department of Education will not grant any waivers of this deadline date. If an application is late, it will not be considered for funding and will be returned to the applicant. No grant may be awarded unless a completed application form has been received.

If you have questions regarding this application, please contact this office at telephone number (202) 732-1890.

Sincerely,



Frank Anthony Ryan
Director
Indian Education Programs

Enclosures

A3



ATTACHMENT E

North Carolina Department of Administration

James G. Martin, Governor
Grace J. Rohrer, Secretary

N.C. Commission of Indian Affairs
A. Bruce Jones, Executive Director

December 11, 1985

Dr. Frank A. Ryan, Director
Office of Indian Programs
Room 2177 FOB 6
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Dr. Ryan:

With reference to your correspondence of 11/25/85 to the superintendents of local school districts that receive formula grants under part A of the Indian Education Act, we are writing on behalf of the North Carolina grantees to seek further clarification.

Since the 1800's the state of North Carolina has identified its Indian citizenry through state legislation and has implemented a policy and practice of issuance of valid certificates of birth indicating these citizens as Indian. It is through these means that the public school districts have been able to verify dependency and eligibility for completion of OE506 Indian Students Certification form. It was not until the late 60's and early 70's that state legislation specified tribal recognition and subsequently the state recognized tribes and organizations began tribal enrollment activities.

Based on the historical precedence and traditional practices followed in North Carolina, as the official state agency responsible for Indian affairs, we are requesting an administrative ruling on the use of valid state birth certificates as evidence of certification as Indian.

P.O. Box 27228 • Raleigh, North Carolina 27611-7228 • Telephone 919-733-5998

An Equal Opportunity / Affirmative Action Employer

Dr. Frank A. Ryan

December 11, 1985

Page 2

Our agency will accept the responsibility for communicating your official clarification to all Title IV Part A grantees in North Carolina. If you have need for further information, please contact me.

Sincerely,



A. Bruce Jones
Executive Director

ABJ/se

ATTACHMENT F



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY
FOR ELEMENTARY AND SECONDARY EDUCATION

DEC 20 1985

Mr. A. Bruce Jones
Executive Director
North Carolina Department
of Administration
P.O. Box 27228
Raleigh, North Carolina 27611-7228

Dear Mr. Jones:

Thank you for your letter of December 11, 1985, requesting a clarification on ED Form 506 policy with respect to birth certificates documenting Indian eligibility under Title IV, Part A, of the Indian Education Act.

In 1953, the State of North Carolina recognized the Indians then residing in Robeson and adjoining counties as the Lumbee Tribe of North Carolina, N.C. Gen. Stat. 71A-3. It is my understanding that the "Lumbee Tribe of North Carolina" included Indians who may have been descended from tribes which no longer formally exist. In 1956, a Federal law recognized the Indians then residing in Robeson and adjoining counties as the "Lumbee Indians of North Carolina", 70 Stat. 255. In Maynor v. Morton, the Court stated that "the limited purpose of the legislation appears to be to designate this group of Indians as "Lumbee Indians" and recognize them as a specific group," 510 F.2d 1254, 1258, April 4, 1975. Therefore, there appears to be no question that the Lumbee Indians of North Carolina are recognized by North Carolina and the United States.

Section 453 of the Indian Education Act requires that an individual Indian be a member of a federally or State recognized tribe, or considered to be an "Indian" for any purpose by the Secretary of the Interior. In order to be eligible for Title IV, Part A, assistance, it is necessary to document membership in a recognized tribe.

The Indian Education Act, as amended, is silent on the form which State recognition must take and on the method employed to document membership.

In North Carolina, it had been the official practice of the State to document Indian status on birth certificates in Robeson and adjoining counties prior to recognition of those Indians as the Lumbee Tribe of North Carolina. The limited Federal recognition accorded to this specific group by the Federal Act of June 7, 1956, 70 Stat. 255, applied to the same group of Indians identified as "Indians" according to that status recorded on their birth certificates.

Page 2 - Mr. A. Bruce Jones

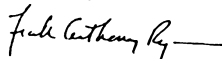
Generally speaking, the Office of Indian Education accepts birth certificates as secondary evidence of Indian eligibility only when they are used to provide a connecting link to a first or second degree ancestor for whom a tribal membership or enrollment number exists. The primary evidence is evidence of membership. The Lumbee Tribe of North Carolina, however, presents a special case since its membership was not officially recognized until 1953 and 1956.

The official State practice of recognizing Lumbee Indians according to their pre-1953 birth certificates has been continued by the Lumbee Regional Development Association (LRDA), which is the organized form of the Lumbee Tribe of North Carolina. Since both the State of North Carolina and the LRDA (Tribe) recognize pre-1953 birth certificates from Robeson and adjoining counties as primary evidence of Indian status as a Lumbee, the Office of Indian Education is inclined to accept this practice, especially since the Indian Education Act is silent on methods of documenting membership.

Accordingly, the Indian Education Programs will accept as primary evidence of Lumbee tribal membership, pre-1953 birth certificates from Robeson and adjoining counties. Since school age children are unlikely to have birth certificates before 1968, a pre-1953 birth certificate from Robeson and adjoining counties which identifies a first or second degree ancestor as being "Indian", will be accepted. However, intervening birth certificates are also necessary to document direct ancestry. This method of documenting eligibility is not offensive to Section 453 of the Indian Education Act since this law contemplates serving Indians who are recognized by States and accords respect to official State practices.

The acceptability of pre-1953 and intervening birth certificates, as evidence of tribal membership is limited to Robeson and adjoining counties, North Carolina. This type of documentation is always open to challenge since it is not primary evidence of student tribal membership. Therefore, you are strongly encouraged to obtain proper documentation from the Lumbee tribe.

Sincerely,



Frank Anthony Ryan
Director
Indian Education Program

cc: Ruth Dial Woods

**Thursday
June 7, 1984**

federal register

Part III

**Department of
Education**

**Office of Elementary and Secondary
Education**

**34 CFR Parts 250, 251, 252, 253, 254,
255, 256, 257, 258, 259, 260, 261, and
262**

Indian Education Programs; Final Rule

D1

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Parts 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, and 262

Indian Education Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations to amend the existing regulations governing awards authorized by the Indian Education Act of 1972, as amended. The changes result from a review of the existing regulations for purposes of reducing burdens as stated in Executive Order 12372. The Secretary takes this action to reduce costs and other regulatory burdens and to clarify application and compliance requirements.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, please call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Hakim Khan, Acting Director, Indian Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW, (FOB-A, Room 2177), Washington, D.C. 20202. Telephone: (202) 245-9020.

SUPPLEMENTARY INFORMATION: These regulations implement the Indian Education Act of 1972 (Title IV of Pub. L. 92-518, the Education Amendments of 1972), as amended.

Under the regulations the Secretary of Education provides Federal financial assistance to public school systems, as well as to Indian-controlled schools, or eligible local educational agencies, on or near reservations, for the purpose of planning, developing, and carrying out elementary and secondary school projects designed to meet the special educational needs of Indian children.

Under the regulations the Secretary also provides Federal financial assistance to Indian tribes, Indian institutions, and Indian organizations, as well as to State and local educational agencies and elementary and secondary schools for Indian children operated by the Department of the Interior, for special planning, pilot, and demonstration projects and other projects designed to improve educational services and opportunities for Indian children and adults.

In addition, for educational personnel development projects, the Secretary provides Federal financial assistance to institutions of higher education, State and local educational agencies, Indian, tribes, and Indian organizations.

These regulations govern eight programs: (1) Formula Grants—Local Educational Agencies and Tribal Schools (formerly known as Entitlement Grants); (2) Indian-Controlled Schools—Establishment; (3) Indian-Controlled Schools—Enrichment Projects; (4) Educational Services for Indian Children; (5) Planning, Pilot, and Demonstration Projects for Indian Children; (6) Educational Personnel Development; (7) Educational Services for Indian Adults; and (8) Planning, Pilot, and Demonstration Projects for Indian Adults.

Not included in these rules are regulations governing the Indian Fellowship Programs, which were previously published.

The Secretary is also removing from the Code of Federal Regulations regulations for four programs that have not been implemented in the recent past and that are not currently funded. Those four programs are: (1) Demonstration Projects—Local Educational Agencies; (2) Adult Education Research and Development Projects; (3) Adult Education Surveys; and (4) Adult Education Dissemination and Evaluation projects.

As a result of these removals, the regulations for many of the remaining programs have been redesignated and given new part numbers in Title 34 of the Code of Federal Regulations. Each of the programs affected by these regulations and the part number assigned are listed in 34 CFR 250.1, the first section of the general provisions regulations governing all of the affected programs.

Regulations for these programs were published previously in the Federal Register on May 21, 1980 (49 FR 34182). The Secretary recently reviewed those regulations for regulatory burden reduction. Based on that review, the Secretary published a notice of proposed rulemaking (NPRM) on January 23, 1984 (49 FR 2850) and invited interested persons to submit comments and recommendations.

The major proposed revisions in that NPRM included: (1) Specific criteria that distinguish planning, pilot, and demonstration projects as three separate grant competitions; (2) deletion of a number of non-statutory provisions from the existing regulations to reduce administrative burdens of applicants and grantees, and to enable them to exercise local options; and (3) provision

for the Secretary to specify the minimum number of pages with which applicants for financial assistance under the formula grants program could satisfy certain of the application requirements and reduce the time needed for and costs involved in the preparation of applications.

More than 140 written comments and recommendations were received during the comment period. Substantive comments and recommendations and the Secretary's responses to them are summarized in the Appendix to these regulations. The summary also explains why the Secretary has made certain changes in the regulations from the notice of proposed rulemaking.

Summary of Changes From NPRM

A brief summary of changes in the final regulations resulting from substantive comments on the NPRM follows.

The list of programs covered by Executive Order 12372 and contained in the preamble to the notice of proposed rulemaking (49 FR 2851; January 23, 1984) was incorrect and conflicted with the accurate listing of covered programs provided in 34 CFR 250.3(e). The error has been corrected elsewhere in this preamble, under the heading *Intergovernmental Review*. The Secretary had earlier determined the appropriateness of including these programs under Executive Order 12372 (see 49 FR 29158 *et seq.*).

It should be noted, however, that transactions with federally recognized Indian tribal governments and with nongovernmental entities, including State postsecondary educational institutions, are not covered under the Department's regulations implementing Executive Order 12372 (see 34 CFR 76.3(b)).

A new paragraph (2) has been added to § 251.20(c) of these regulations to be consistent with section 308(b)(2)(B)(ii) of the Act. The added paragraph provides that the parent committee must include at least one teacher and, where applicable, at least one secondary school student to be served by the program for which assistance is sought.

Section 251.20(b)(2) of these regulations has been changed to include guidance counselors as "teachers" eligible to serve as members of the parent committee. It has been the practice under this program to regard certified guidance counselors as teachers for purposes of parent committee membership.

Section 251.22(b)(3)(v) has been changed to provide for an assurance by an applicant that the parent committee

has approved not only the project for which the application is made, but also any amendments to the application.

Also, a new paragraph has been added to this section which specifies that the approval of a project by a parent committee must be in writing unless the committee and applicant agree on another method of documenting that approval.

These final regulations are substantially the same as the proposed regulations with the exception of the changes summarized in preceding paragraphs. Numerous technical and editorial changes have been made in the regulations to improve clarity, ensure consistency, and eliminate redundancy.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria established for major regulations in the order.

Paperwork Reduction Act of 1980

Information collection requirements contained in these regulations (§§ 251.22, 252.20, 253.20, 254.20, 255.20, 256.20, 257.20, and 258.20) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 1810-0021, expiration date February 1986. Section 251.50 has been approved and assigned OMB Control No. 1810-0031, expiration date September 1985.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

Intergovernmental Review

The Indian Education Act Programs in 34 CFR Parts 251, 254, 255, 257, and 258 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a

strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

List of Subjects

34 CFR Part 250

Adult education, Education, Elementary and secondary education, Grant programs—Indians, Indians—education, Teachers.

34 CFR Parts 251, 252, 253, 254, and 255

Education, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education.

34 CFR Part 256

Education, Grant programs—education, Grant programs—Indians, Indians—education, Teachers.

34 CFR Parts 257 and 258

Adult education, Education, Grant programs—education, Grant programs—Indians, Indians—education.

34 CFR Parts 259, 260, 261, and 262

Adult education, Educational research, Grant programs—education, Grant programs—Indians, Indians—education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Numbers: 84.000 Development Awards Program—Indian Education—Local Educational Agencies and Tribal Schools; 84.001 Indian Education—Special Programs and Projects; 84.002 Indian Education—Adult Indian Education; and 84.072 Indian Education—Grants to Indian-Controlled Schools)

Dated: May 31, 1984.

T. H. Bell,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

1. Part 250 is revised to read as follows:

PART 250—INDIAN EDUCATION ACT—GENERAL PROVISIONS

Subpart A—General

Sec.

250.1 What programs are governed by these regulations?

250.2 [Reserved]

Sec.

250.3 What regulations apply to these programs?

250.4 What definitions apply to these programs?

250.5 What provisions of the Indian Self-Determination and Assistance Act apply to these programs?

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

250.20 How does an applicant apply under a particular program?

Authority: Title IV, Pub. L. 92-318 (the Indian Education Act), 86 Stat. 334, as amended (20 U.S.C. 241aa–241ff, 1221a, 1221b, 3385, 3385a), unless otherwise noted.

Subpart A—General

§ 250.1 What programs are governed by these regulations?

The regulations in this part apply to all programs conducted under the Indian Education Act except the Indian Fellowship Program (34 CFR Part 283). Programs governed by these regulations and their applicable program regulations are as follows:

(a) Formula Grants—Local Educational Agencies and Tribal Schools (34 CFR Part 251).
(20 U.S.C. 241aa–241ff)

(b) Indian-Controlled Schools—Establishment (34 CFR Part 252).
(20 U.S.C. 241bb(b))

(c) Indian-Controlled Schools—Enrichment Projects (34 CFR Part 253).
(20 U.S.C. 241bb(b))

(d) Educational Services for Indian Children (34 CFR Part 254).
(20 U.S.C. 3385 (a), (c))

(e) Planning, Pilot, and Demonstration Projects for Indian Children (34 CFR Part 255).

(20 U.S.C. 3385 (a), (b))

(f) Educational Personnel Development (34 CFR Part 256).
(20 U.S.C. 3385(d), 3385(a))

(g) Educational Services for Indian Adults (34 CFR Part 257).
(20 U.S.C. 1211a)

(h) Planning, Pilot, and Demonstration Projects for Indian Adults (34 CFR Part 258).

(20 U.S.C. 1211a)

§ 250.2 [Reserved]

§ 250.3 What regulations apply to these programs?

In addition to the regulations contained in this part and the applicable program regulations, the programs under

34 CFR Parts 251 through 256 are subject to the Education Department General Administrative Regulations (EDGAR) in—

- (a) 34 CFR Part 74 (Administration of Grants);
- (b) 34 CFR Part 75 (Direct Grant Programs), except for § 75.590(c) relating to a grantee's project evaluation;
- (c) 34 CFR Part 77 (Definitions);
- (d) 34 CFR Part 78 (Education Appeal Board); and
- (e) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities), except that Part 79 does not apply to 34 CFR Parts 252, 253, and 256.

(20 U.S.C. 241aa–241ff, 1211a, 3385, 3385a)

§ 250.4 What definitions apply to these programs?

(a) *Definitions in EDGAR.* Except as otherwise provided, the following terms used in this part and in 34 CFR Parts 251 through 256 are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget period
EDGAR
Elementary school
Facilities
Fiscal year
Grant
Grantee
Grant period
Local educational agency (LEA) (except as used in 34 CFR Parts 257 and 258)
Local government
Minor remodeling
Nonprofit
Private
Project
Project period
Public
Secondary school (except as used in 34 CFR Parts 254, 255, and 256)
Secretary
State (except as used in 34 CFR Parts 251, 252, and 253)
State educational agency (SEA)
Supplies

(b) *Definitions that apply to the programs governed by this part.*

Unless otherwise provided, the following definitions apply to this part and to 34 CFR Parts 251 through 258:

"Adult" means an individual who has attained the age of sixteen.

"Adult education" means services or instruction below the college level for adults who—

- (i) (I) Lack sufficient mastery of basic educational skills to enable them to function effectively in society; or
- (ii) Do not have a certificate of graduation from a school providing secondary education and have not achieved an equivalent level of education; and

(2) Are not currently required to be enrolled in school.

"Ancillary educational personnel"

(1) This term means guidance counselors, librarians, and others who assist in meeting the educational needs of Indian students.

(2) The term does not include persons in positions not directly involved in the educational process, such as clerks or cafeteria personnel.

"Child" means an individual within the age limits for which the applicable State provides a free public education.

"Demonstration project" means a project that affords opportunities to examine in practice, and to assess the qualities of, an educational method, approach, or technique for the purpose of adaptation of that method, approach, or technique by other institutions with similar needs.

"Equipment" means—

(1) Machinery, utilities, and built-in apparatus;

(2) Any enclosure or structure necessary to house the items listed in paragraph (1) of this definition; and

(3) Any other item necessary for the functioning of a facility for the provisions of educational services, including items such as—

- (i) Instructional apparatus and necessary furniture;
- (ii) Printed, published, and audiovisual instructional materials; and
- (iii) Books, periodicals, documents, and related materials.

"Free public education" means

education that is—

(1) Provided at public expense, under public supervision and direction, without tuition charge; and

(2) Provided as elementary or secondary school education in the applicable State.

"Full-time student" means an individual pursuing studies that constitute a full-time workload in accordance with an institution's established policy.

"Handicapped person" means an individual requiring special education and related services because he or she—

(1) Is mentally retarded, hard-of-hearing, deaf, speech-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health-impaired; or

(2) Has a specific learning disability.

"Indian"—except as noted in § 250.5(b)—means an individual who is—

- (1) A member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside;

(2) A descendant, in the first or second degree, of an individual described in paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) An eskimo or Aleut or other Alaska Native.

"Indian institution" means a preschool, elementary, secondary, or postsecondary school that—

(1) Is established for the education of Indians;

(2) Is controlled by a governing board, the majority of which is Indian; and

(3) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation.

"Indian organization" means an organization that—

(1) Is legally established—

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Has as its primary purpose the promotion of the educational, economic, or social self-sufficiency of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

"Indian tribe" means any federally or State-recognized Indian tribe, band, nation, rancheria, pueblo, Alaska Native village, or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (85 Stat. 688), that exercises the power of self-government.

"Institution of higher education" means, in any State, an educational institution that—

(1) Admits as a regular student only an individual having a high school graduation certificate or the recognized equivalent of a high school graduation certificate;

(2) Is legally authorized within that State to provide a program of education beyond high school;

(3) Provides—

(i) An educational program for which it awards a bachelor's degree;

(ii) An educational program of not less than two years that is acceptable for full credit toward a bachelor's degree; or

(iii) A two-year program in engineering, mathematics, or the physical or biological sciences that is designed to prepare a student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields that require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(4) Is a public or other nonprofit institution; and

(5)(i)(A) Is accredited by a nationally recognized accrediting agency or association listed by the Secretary; or

(B) If not accredited, is an institution whose credits are accepted, on transfer, by not fewer than three institutions that are accredited, on the same basis as if transferred from an institution that is accredited.

(ii) However, in the case of an institution described in paragraph (3)(iii) of this definition, if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit that type of institution—

(A) The Secretary appoints an advisory committee composed of persons specially qualified to evaluate training provided by that type of institution; and

(B) The advisory committee prescribes the standards of content, scope, and quality that must be met in order to qualify that type of institution to participate under the appropriate program and determines whether particular institutions meet those standards.

(iii) For the purpose of paragraph (5) of this definition, the Secretary publishes a list of nationally recognized accrediting agencies or associations that the Secretary determines to be reliable authority as to the quality of education or training offered.

"Local educational agency" (LEA), as used in 34 CFR Parts 257 and 258, means—

(1) A public board of education or other public authority legally constituted within a State for either administrative control or direction of public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or combination of school districts or counties recognized in a State as an administrative agency for its public elementary or secondary schools; or

(2) If there is a separate board or other legally constituted local authority having administrative control and direction of adult education in public schools in the area referred to in paragraph (1) of this definition, that other board or authority.

"Parent"

(1) This term includes a legal guardian or other individual standing *in loco parentis* (in the place of the parent). Examples of individuals who may stand *in loco parentis* with respect to a child are—

(i) A foster parent of the child; and

(ii) A grandparent with whom the child resides.

(2) In determining whether an individual stands *in loco parentis* with respect to a child, an LEA may consider such factors as—

(i) The current relationship of the child and the natural parent(s);

(ii) The length and stability of the relationship between the individual and the child;

(iii) Tribal custom and tribal law;

(iv) Applicable State law, whether legislative or judicial; and

(v) Dependency for purposes of State of Federal income taxes.

"Pilot project" means a project that tests an educational method, approach, or technique in a limited and controlled setting to determine—

(1) Whether the educational method, approach, or technique meets an established need; and

(2) Whether the educational objectives of the educational method, approach, or technique are appropriate for Indian children or adults.

"Planning project" means a project that—

(1) Establishes educational objectives; and

(2) Proposes activities and resources that would be needed to meet these objectives for the education of Indian children or adults.

"Secondary school," as used in 34 CFR Parts 254, 255, and 258, means a day or residential school that provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

"State," as used in 34 CFR Parts 251, 252, and 253, means any of the 50 States, Puerto Rico, Wake Island, Guam, the District of Columbia, American Samoa, or the Virgin Islands.

"Stipend" means an allowance for personal living expenses paid to a participant in a personnel development project.

"Teacher aide"

(1) This term means a person who assists a teacher in the performance of the teacher's teaching or administrative duties.

(2) The term does not include persons in positions not directly involved in the educational process, such as clerks or cafeteria personnel.

(20 U.S.C. 241aa-241ff, 244, 661, 1202, 1211a, 1221h(e); 3301, 3303, 3305a)

§ 250.5 What provisions of the Indian Self-Determination and Education Assistance Act apply to these programs?

(a) Awards under programs covered by this part that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises—as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e))—preferences in the award of contracts in connection with the administration of the grant.

(Pub. L. 93-638, Section 7(b); 25 U.S.C. 450e(b))

(b) For purposes of this section, an "Indian" is a member of any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (65 Stat. 668), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Pub. L. 93-638, Section 4 (a), (b); 25 U.S.C. 450b (a), (b))

Subpart B—[Reserved]

Subpart C—How Does One Apply for a Grant?

§ 250.20 How does an applicant apply under a particular program?

(a) An applicant shall specify in its application the particular program under 34 CFR Parts 251 through 258 under which it is applying.

(b) If the applicant submits an application under a program covered by this part and the project proposed by the applicant is not authorized under that program, the Secretary may, with the consent of the applicant, review and consider the application under an appropriate program, if any, covered by this part.

(20 U.S.C. 241aa-241ff, 1211a, 3305a, 3305a)

2. Part 251 is revised to read as follows:

PART 251—FORMULA GRANTS— LOCAL EDUCATIONAL AGENCIES AND TRIBAL SCHOOLS

Subpart A—General

Sec.

251.1 Formula Grants—Local Educational Agencies and Tribal Schools

251.2 Who is eligible for assistance under this program?

251.3 What regulations apply to this program?

251.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

251.10 What type of projects may be funded?

Subpart C—How Does One Apply for a Grant?

251.20 How is a parent committee selected?

251.22 What must an application include?

Subpart D—How Does the Secretary Make a Grant?

251.30 How does the Secretary determine the amount of a grant?

Subpart E—What Conditions Must Be Met by a Grantee?

251.40 What is the maintenance of effort required for LEAs?

Subpart F—What Are the Administrative Responsibilities of a Grantee?

251.50 What are the responsibilities of a grantee regarding student certification?

Authority: Title IV, Part A, Pub. L. 95-318 (the Indian Education Act), 90 Stat. 334, as amended (20 U.S.C. 241aa–241ff), unless otherwise noted.

Subpart A—General

§ 251.1 Formula Grants—Local Educational Agencies and Tribal Schools

This program, Formula Grants—Local Educational Agencies (LEAs) and Tribal Schools, provides financial assistance to develop and carry out elementary and secondary school projects that meet the special educational and culturally related academic needs of Indian children.

(20 U.S.C. 241aa(a), 241bb-1)

§ 251.2 Who is eligible for assistance under this program?

The following are eligible for assistance under this program:

(a) *LEAs.* (1) An LEA is entitled to receive a grant if the number of Indian children enrolled in the LEA's schools is either—

(i) At least 10; or

(ii) At least half the total enrollment for that agency.

(2) However, an LEA may apply without regard to the enrollment

requirements of paragraph (a)(1) of this section if it is located—

(i) In Alaska, California, or Oklahoma; or

(ii) On, or in proximity to, an Indian reservation.

(20 U.S.C. 241bb(a))

(b) *Tribal schools.* An Indian tribe—or an organization that is controlled or sanctioned by an Indian tribal government—that operates a school for the children of that tribe is eligible to receive a grant on behalf of that school if the school either—

(1) Provides its students an educational program that meets the standards established by the Bureau of Indian Affairs under section 1121 of the Education Amendments of 1978; or

(2) Is operated by that tribe or organization under a contract with the Bureau of Indian Affairs in accordance with the Indian Self-Determination and Education Assistance Act.

(20 U.S.C. 241bb-1)

§ 251.3 What regulations apply to this program?

The following regulations apply to this program:

(a)(1) The regulations in 34 CFR Part 250.

(2) However, 34 CFR 75.111 (d) and (e) of the Education Department General Administrative Regulations, relating to the contents of an application, do not apply to this program.

(b)(1) The regulations in this Part 251.

(2) However, the following provisions of this part do not apply to tribal schools:

(i) Section 251.20, relating to the selection of the parent committee.

(ii) Any other provisions of this part relating to the parent committee.

(iii) Section 251.40, relating to the maintenance of effort required for LEAs. (20 U.S.C. 241aa–241ff)

§ 251.4 What definitions apply to this program?

The definitions in 34 CFR 250.4 apply to this program.

(20 U.S.C. 241aa–241ff)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 251.10 What types of projects may be funded?

(a) The Secretary may fund applications proposing the establishment, maintenance, or operation of projects specifically designed to meet the special educational or culturally related academic needs, or both, of Indian children—

(b) An applicant may also apply for assistance to—

(1) Plan for and take other steps leading to the development of projects; and

(2) Carry out pilot projects designed to test the effectiveness of those plans.

(20 U.S.C. 241cc)

Subpart C—How Does One Apply for a Grant?

§ 251.20 How is a parent committee selected?

(a) Before developing an application, an LEA shall establish and publicize procedures for the selection of a parent committee.

(b) The following are eligible to select and serve on a parent committee:

(1) Parents of Indian children who will participate in the proposed project.

(2) Teachers, including guidance counselors, except members of the project staff.

(3) Indian secondary school students, if any, enrolled in the LEA's schools.

(c)(1) At least half the members of the committee must be parents of the Indian children to be served by the proposed project.

(2) The committee must include at least one teacher and, where applicable, at least one secondary student to be served by the program for which assistance is sought.

(d) The persons listed in paragraph (b) of this section shall select the members of the committee.

(e) An individual may continue to be a member of the committee only so long as he or she is eligible under paragraph (b) of this section.

(20 U.S.C. 241dd(b)(2)(B))

§ 251.21 Must an applicant hold a public hearing?

(a) Before preparing an application for a new or continuation award, an applicant shall hold one or more hearings open to the general public.

(b) At the public hearing or hearings, the applicant shall provide to the parents of Indian children—including persons acting *in loco parentis* other than school administrators or officials—teachers, and, where applicable, secondary school students, a full opportunity to understand the project for which the applicant is seeking assistance and to offer recommendations on the project.

(c) In the case of an application for a continuation award, the grantee shall provide at the public hearing or hearings an opportunity for full public discussion of all aspects of the project to date and for the remainder of the project period.

(20 U.S.C. 241dd(b)(2)(B)(i))

§ 251.22 What must an application include?

(a) After holding the public hearing described in § 251.21, each applicant shall prepare its application in accordance with this section.

(b) *Local educational agencies.* An application from an LEA must—

- (i) Describe the project for which the applicant seeks assistance;
- (2) State the number of Indian children enrolled in the LEA and the number to be served by the project;
- (3) Provide assurances that—
- (i) The applicant will administer, or supervise the administration of, the activities and services for which it seeks assistance;

(ii) The applicant will make an annual report and any other reports, in the form and containing the information that the Secretary may require, to—

- (A) Carry out the functions of the Secretary under this program; and
- (B) Determine the extent to which funds provided under this program have been effective in improving the educational opportunities of Indian students in the area served;

(iii) The applicant will keep records and will afford the Secretary access to these records as the Secretary may find necessary to assure the correctness and verification of reports made by the applicant;

(iv) The applicant will use the best available talents and resources, including persons from the Indian community, and will substantially increase the educational opportunities of Indian children in the area to be served by the proposed project;

(v) The applicant has developed the project for which application is made and any amendment to the application—

(A) In open consultation with parents of Indian children—including persons acting *in loco parentis* other than school administrators or officials—teachers, and, where applicable, secondary school students, including one or more public hearings that meet the requirements of § 251.21;

(B) With the participation of a parent committee selected in accordance with § 251.20; and

(C) With the approval of that parent committee in writing, unless another method of documenting the approval is agreed upon by the applicant and the parent committee;

(vi) The parent committee selected in accordance with § 251.20 will adopt and abide by reasonable by-laws for the conduct of the project for which assistance is sought;

(vii) The applicant will provide for methods of administration as are necessary for the proper and efficient operation of the project;

(viii) The applicant has fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of, and accounting for, funds the applicant receives under this program;

(ix) The applicant will adopt effective procedures, including provisions for appropriate objective measurement of educational achievement, to evaluate at least annually the effectiveness of the proposed project in meeting the special educational needs of Indian students; and

(x) In the case of an application for funds for planning—

(A) The planning was or will be directly related to projects to be carried out under 34 CFR Part 251, 252, or 253 and has resulted, or is reasonably likely to result, in a project that will be carried out under 34 CFR Part 251, 252, or 253; and

(B) The planning funds are needed because of the innovative nature of the project or because the LEA lacks the resources necessary to plan adequately for projects to be carried out under 34 CFR Part 251, 252, or 253;

(4) Include a copy of or describe the policies and procedures that assure that funds made available under this program for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of funds under this program, be made available by the applicant for the education of Indian children, and in no case to supplant those funds of the applicant; and

(5) Include a copy of or describe the policies and procedures, including those relating to the hiring of personnel, as will insure that the project for which the applicant seeks assistance will be operated and evaluated in consultation with, and with the involvement of, parents of the children and representatives of the area to be served, including the parent committee established under § 251.20.

(c) *Special application provisions.* With regard to the requirements in paragraph (b) of this section, in order to reduce the burden on applicants, the Secretary may recommend each year in the application notice the minimum number of pages with which an applicant may satisfy the requirements in paragraphs (b) (1), (4), and (5) of this section.

(d) *Tribal schools.* An applicant for assistance to support a tribal school shall comply with paragraphs (a), (b), and (c) of this section with the exception

of those provisions that refer to a parent committee.

(20 U.S.C. 241dd)

(OMB Control No. 1810-0021, expiration date 2/86)

Subpart D—How Does the Secretary Make a Grant?**§ 251.30 How does the Secretary determine the amount of a grant?**

(a) The Secretary determines the amount an applicant receives any fiscal year on the basis of the formula in section 303(a), Part A, of the Indian Education Act.

(b) Under the statutory formula, the Secretary computes the amount of the grant to which an applicant is entitled by multiplying—

(1) The number of Indian children enrolled in the schools of the applicant and to whom the applicant provides free public education; by

(2) The average per pupil expenditure for the LEA as determined under section 303(a)(2)(C), Part A, of the Indian Education Act.

(c) If necessary, on the basis of available appropriations, the Secretary reduces the amount of an applicant's grant proportionately with those of all other applicants.

(20 U.S.C. 241bb(a), 241ff(a))

Subpart E—What Conditions Must Be Met by a Grantee?**§ 251.40 What is the maintenance of effort required for LEAs?**

(a) The Secretary does not make payments to an LEA for any fiscal year unless the appropriate SEA finds that the combined fiscal effort of that LEA and the State with respect to the provision of free public education by that LEA for the preceding fiscal year was not less than the combined fiscal effort for that purpose for the second preceding fiscal year.

(b)(1) For the purpose of making the finding described in paragraph (a) of this section, a SEA may compute combined fiscal effort on the basis of either aggregate expenditures or per pupil expenditure.

(2)(i) "Aggregate expenditures" means expenditures by the LEA and the State for free public education provided by that LEA.

(ii) The term includes expenditures for administration, instruction, attendance, health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student activities.

(iii) The term does not include expenditures for community services, capital outlay and debt service, or any expenditures from funds granted under any Federal program of assistance.

(3) "Per pupil expenditure" means aggregate expenditures divided by the number of pupils in average daily attendance at the LEA's schools—as determined in accordance with State law—during the fiscal year for which the computation is made.

(20 U.S.C. 241ee(b)(3))

Subpart F—What Are the Administrative Responsibilities of a Grantee?

§ 251.50 What are the responsibilities of a grantee regarding student certification?

For each student included in the count of Indian students on which the amount of a grant is based, a grantee shall keep on file the student certification form prescribed by the Secretary.

(20 U.S.C. 241bb-241dd)

(OMB Control No. 1810-0031, expiration date 9/85)

ATTACHMENT H

Site Visit for Robeson County, North Carolina

ELIGIBILITY

The grant award document for the Robeson County FY 1982 project gives the student count as 8,747 and there were 8,747 signed 506 forms on file. Ms. Sharon Hunt of the Title IV staff has the full-time job of keeping track of Title IV eligible students and she seems to have the information practically up to the minute.

The 506 forms are kept on file in Ms. Hunt's office according to an apparently random numbering system. One hundred forms were examined and all were complete. All students with signed 506 forms on file are listed in the computer in Ms. Hunt's office and can be accounted for any number of ways: i.e., name, grade, 506 number, etc. Ms. Hunt receives a monthly report from each school reporting changes, such as new students, transfers, drop-outs. The computer is given the information if Part A students are involved. The computer also notes its graduates every June.

Ms. Hunt receives participation records for every Title IV class and activity, and the computer notes that as well. Ms. Hunt goes to all pre-school clinics where parents are signing scores of forms, and gets the 506 form in line, while birth certificates and other family records are at hand. The signed form is not used until the child starts school, but it is an efficient method for getting the forms completed.

In addition to the file of 506 forms, and computer, there is a card file with data on all Title IV students. However, the computer can present the student data in all manner of combinations, for any data in any recent grant year. The system is impressive. It may be as accurate and complete a method as is possible, as long as someone keeps the computer informed of the students' activities, comings, and goings. Ms. Hunt appears to be doing that very well.

PARENT COMMITTEE (PC)

Parent committee operations were discussed with Woodrow Dial, Chairperson, as well as PC officers Pearlean Revel, Shelby Dial, and Dick Tracy Hunt. The PC is composed of 38 members, including 10 teachers who are also parents, and 3 students. Members are selected from each school in the county and serve staggered terms. They are all Indian. Meetings are held bimonthly. A sufficient number of members attend to constitute a quorum; however, it was noted that attendance is low at public hearings.

The PC operates largely through standing committees on such topics as program planning, monitoring, needs assessment, and finance. Members participate in most aspects of program development and implementation and receive staff reports at their meetings. While part of the FY 1980 outside evaluation was based on interviews with the PC, there have not yet been any committee discussions of that report. It would be beneficial for the PC to have a briefing on the report and discuss its implications.

Persons interviewed believe that improved self-concept is the greatest program accomplishment. Students are proud to be Indian, although many of their parents were not, and as a result do better in school. In addition, it is believed that Title IV provides eligible students with beneficial exposure to

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places and people outside Robeson county.

When asked how the project might be improved, the officers cited poor working conditions for Title IV staff in some schools. While they believe that the program does address student needs, they did say that medical problems exceed available resources and that they wish more students could benefit from special activities such as the summer program.

The officers believe that the existence and efforts of the PC provide several benefits to the program: They insure that benefits are spread out among many different children and that the program represents community needs. Given the time which members devote to the project, they want to be sure that their children truly benefit.

NEEDS ASSESSMENT

The needs assessment, which is updated annually, has been developed by the Title IV staff, PC, and a consultant, Dr. Tafoya, from the University of North Carolina. School records such as grade level equivalents, achievement test scores, drop-out and absenteeism rates are assembled and summarized by Mr. Locklear, project director. A survey is distributed to parents, students, and school district staff. On the first page, data are sought concerning participation in Title IV. The remainder of the survey attempts to elicit preferences for the program. It is suggested that the project staff and PC take a new look at that form before using it again. Activities (e.g. arts and crafts) compete with strategies (e.g., after school class) or objectives (drop-out prevention). As a result, a person unfamiliar with the Robeson program might have difficulty understanding some of the items. Secondly, parents are asked to rate the importance of about 20 needs statements. Some of these are similar (e.g. communication and listening skills), but when such items are rated dissimilarly, it is unclear how an analysis is made.

The Robeson County program generally serves the major identified needs. These include academic achievement, cultural enrichment, career/post secondary educational opportunity, parental support for dental/medical care, and some counseling and home visits. The persons interviewed believe that the project is working toward meeting identified needs. It was mentioned that the project is not attempting to deal with the high drop-out rate because of county efforts in this area, but that the drop-out level is significant. Further, there are problems of alcoholism, drugs, and teenage pregnancy that have gone unattended. There is some concern that program funds used for parental costs provide a vital service but are a drain on program resources and also that summer enrichment activities may not be cost effective. Both these activities, however, are popular with parents.

In planning the project, there is evidence that total available resources were considered. A number of persons interviewed expressed the view that Title IV serves as a lighthouse project, experimenting with new ideas and procedures which may later be adopted by the county for all students.

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Efforts are made to avoid duplication of efforts. Rather than offer in-school academic tutoring, which is provided by the State, Title IV provides tutoring in practical applications (as measured by the N.C. competency tests) and summer programs. Title IV pays dental and some other medical costs which will not be assumed by county agencies. In areas where the county system devotes attention, Title IV services are not provided.

PROJECT DESIGN

The application lists some 11 different activities, each falling under one of three categories: Educational, Cultural, and Parental Support.

The Educational component includes the following:

- o Small group or individual tutoring for students in grades 7-8. The subject is literacy, or survival skills, and tutoring occurs during class within the student's classroom two or three times a week. Students receive this service and a pre/post test (comparable to the NC competency test) may show gains in student scores, according to the staff. Teachers work with specific competencies and this summer a workbook will be prepared, pooling teacher-designed activities for each competency.
- o Summer academic program for 100 4th-6th graders. A 4-week remedial program offered to the same students each summer for three consecutive years, it is hoped, will result in improved academic achievement. Program instructors are 4 regular classroom teachers. Some tutorial assistance is offered during the year for these students.
- o Summer enrichment program at Pembroke State University for about 180 students. Students are selected based on CAT scores, and a need to distribute benefits equally among schools in the system. According to Mr. Locklear, about 600 students have applied.
- o Historical research. An after school program serving 22 students in grades 10-12. Students conduct interviews, develop family trees, and have been documenting local history through cemetery and marriage license searches. Their work will be useful to persons involved in the Lumbees' efforts to achieve federal recognition. The group served is smaller than originally anticipated.
- o Career awareness. An after school program for 15 students, grades 10-12. Students were practicing the skills of job interviews, as follow-up to an out-of-town workshop.
- o Test taking skills. High school students who do not pass the North Carolina competency test may receive special coaching through Title IV. Classes occur during the school day.
- o Youth leadership activities.

Cultural enrichment includes two elements:

- o Three cultural resource specialists work with K-9 classes in 3 schools. They provide instruction to entire classes, Indian and non-Indian, from a Title IV-developed curriculum. The program was initiated as a "demonstration" design whereby regular or social studies teachers would share the teaching with Title IV staff. However, based on 2 observations, the program is not operating as planned and the Unity curriculum, it was said, is seldom used by teachers.

- o Arts and crafts. An art teacher, on request, offers instruction in various media to students of different grade levels. No art is offered by the county system.

The Parent Support component involves medical/dental services and transportation to Title IV classes, activities, etc. Three aides work with a large number of students throughout the system. One aide, Vergie Sanderson, explained that she works with 9 schools. Referrals come mainly from teachers; each referral is checked to be certain the student has a 506 form, a genuine need, and qualifies under the free/reduced lunch criterion. Then Ms. Sanderson obtains the principal's assurance of income level, and sends a request to Mr. Locklear for approval. A number of persons interviewed expressed their support for this component which has resulted in the reduction of health barriers to student achievement.

Finally, field trips occur in conjunction with academic and cultural activities. Instructors must submit a request for each trip, explaining its relationship to class work, and planned teacher follow-up. Only students who have participated in other activities may attend.

In general, the project appeared to be on schedule, and all objectives were addressed. Mr. Locklear structures activities carefully in the beginning and end of the year; and leaves most responsibility for monitoring events in between to the appropriate coordinators.

A function has been added to the project--that of public information. Mr. Walter Oxendine, working through a network of school-based coordinators, publicizes and records Title IV and other special school events. He writes a weekly column in three local newspapers and prepares a newsletter on the county's compensatory education programs. He also videotapes school activities. After July 1, his salary will be 50% Title IV; presently it is 100%. Most of his work, however, appears to be devoted to non-Title IV publicity for the school system. It is inappropriate for Title IV to finance a public relations officer for the school district. Title IV funds spent on his salary should go to serve eligible Indian students. When Mr. Oxendine becomes half-time officer for Title IV, he should be certain that half of his time is spent on Title IV and that proper documentation is made for the purpose of future audits.

Duplication of efforts is avoided. Since Chapter I provides classroom aides for remediation of basic skills, most of the Title IV tutoring focuses on competency skills. Thus, rather than directly work with classroom teachers,

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Title IV tutors function independently but are located within classrooms. The most common instance of coordination between Title IV and the regular school staff comes over medical/dental care referrals.

The project serves only eligible students with the following exceptions:

1. Indian history classes
2. Public information function
3. Field trips, only if there is extra space

PERSONNEL

There are 46 full-time and 1 part-time staff members, according to Mr. Locklear. They are paid on a State salary schedule. Staff training has included: consultants from Pembroke State to help with reading instruction, and selected workshops or summer programs for other specialists. The tutors have been required to obtain Associate degrees. A 4-day workshop was held for the entire staff last fall.

EVALUATION

The FY 1980 evaluation report has just been printed. It includes some recommendations culled from interviews with students, parents, and staff. These may be helpful in improving the project. It also contains many pages of unanalysed statistical data which serve no useful function.

The project is completing a multi-year grant this year. A different evaluation plan and contractor will be used. Dr. Tafoya will analyze test results, participant perceptions as recorded in survey data, and achievement of projected objectives. While some of the Robeson County correspondence and reporting has alluded to efforts to seek validation by the U.S. Department of Education, it does not appear as though any of the project components have been designed as "model" activities appropriate for replication by others. Rather, the project serves the needs of a large number of students in the county through a variety of established educational methods.

In evaluating the project's success, the project director pointed to academic components including literacy skills, summer elementary program, and the Indian history curriculum.

Mrs. Woods believes that Title IV's work in participatory governance—providing parents with access to educational decision-making—is particularly beneficial. The impact of the project in this area is illustrated, for example, by the election of four PC members to the school board, according to Mrs. Woods. She also believes that Title IV serves as a lighthouse project, showing others new ideas and methods. Mrs. Woods would like to see teacher training added to the Title IV mandate; the resistance of some teachers and principals within the district to the project continues to be a problem.

ADMINISTRATIVE POLICIES AND PROCEDURES

Ms. Carolyn Locklear is the bookkeeper for Robeson County's Title IV program. She has always kept the books by hand but this year she is sharing responsibilities and her office with a computer. If ever she or the computer have a misunderstanding, or their figures don't agree, a computer consultant from Pembroke State University is on call and is most responsive and helpful. The computer is programmed to handle the Indian Education account according to the federal categories as well as state fiscal codes and can report on funds from every possible angle. It still must agree with Ms. Locklear's books but she concedes its flexibility and report capabilities.

The LEA pays all salaries and then bills the Title IV program so LEA and Ms. Locklear's books must agree on salary accounts. Other program expenses are made by purchase order which must be signed by Ms. Woods and an LEA officer before being paid by Ms. Locklear.

A computer print out, which is easy to read, is prepared for all parent committee meetings, showing the status of all Title IV budget categories. Although the budget is large, Ms. Locklear has the computer and the books well in hand.

Several different methods are used in monitoring staff. Ms. Blue, Coordinator of Educational Enrichment, visits each tutor in the classroom at least once a month. Mr. Locklear observes each staff member twice a semester. Ongoing supervision is also provided by principals in the schools where Title IV staff members are based. In addition, staff time is accounted for on student and daily logs. Documentation efforts also extend to instruction. Staff members wishing to schedule field trips must submit a trip request, explaining how the trip fits in with ongoing class activities. A lesson plan format also requires teachers to plan thoroughly for each lesson.

RECOMMENDATIONS

The Robeson County project appears to be well managed, to involve many competent, committed personnel, and to enjoy the support of the parent committee. The following recommendations are offered for consideration:

1. Needs assessment. For the future, the survey instrument could benefit from simplification and redesign. We would be glad to assist you.
2. The cultural enrichment in-class component is not working as planned. More active dissemination by Title IV and more cooperation from the county is needed to ensure that regular classroom teachers assume some responsibility for teaching the curriculum. In addition, the cultural instruction might benefit from additional inservice on teaching strategies outside the lecture/class discussion format.
3. Title IV funds are expected to benefit eligible students, as projected in the application. These funds should not be used for general expenses of the school district. In particular, Title IV should not be providing publicity for the County school system. Mr. Oxendine is spending some of his time on Title IV public relations, but, based on an interview with him, it appears

that most of his time is spent on general school events (which may or may not involve Title IV students). Such a practice most certainly dilutes the services offered by Title IV to eligible students; it does not contribute to the objective of increasing community knowledge of Title IV. This practice should not be continued. When Mr. Oxendine reverts to half-time on Title IV, he should be certain that he can provide documentation of his time.

4. The PC and staff should take time to review the results of interviews summarized in the FY '80 evaluation report.

Elizabeth Farquhar and Mary Margaret Hall



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

ATTACHMENT H-1

JUN 3 1981

Mr. Purnell Swett
Superintendent
Robeson County Board of Education
P.O. Box 1328
Lumberton, North Carolina 28358

Dear Mr. Swett:

The Robeson County Compensatory Education Project Title IV, Part A was reviewed by the Federal Office of Indian Education (IE) program staff May 4-6, 1981. The purpose of this on site review and evaluation was to ensure that federal funds are effectively used to accomplish the following: (1) meet the special educational and culturally related academic needs of Indian children and (2) substantially increase the educational opportunities of Indian children.

The IE visitation staff, consisting of Richard Snowden, Nancy Scrivener, Pat Natale and Todd Buchta thank you and commend you for your knowledgeable participation in the Title IV, Part A entrance interview on May 4th. Our appreciation to Mrs. Ruth Dial Woods for her excellent planning of activities relating to the evaluation.

Some of the major strengths of the Robeson County Title IV Part A are highlighted in the following areas:

1. The Leadership of the LEA project director and the chairman of the Parent Committee was observed as being instrumental in providing quality services for the Indian children of this community.
2. The Administrative Policies and Procedures of this project are excellent. The complete implementation of the computer system for Part IV Indian student records will complement these procedures.

The project was evaluated by IE staff and is in compliance with the Federal Rules and Regulations that govern the Indian Education Act Title IV Part A. Specifically Compliance items are 506 Forms, Parent Committee, Needs Assessment, Project Design and Administrative Policies and Procedures.

SUMMARY of FINDINGS and RECOMMENDATIONS

Parent Committee Involvement

IE staff attended a regular Parent Committee meeting on May 5, 1981 at the Indian Youth Center chaired by Woodrow Dial to observe parental involvement in Title IV, Part A project activities. The staff also interviewed parents after the scheduled meeting.

The structure and operation of the Parent Committee was observed to be active, productive, and in compliance with the requirements of 45CFR 186a.41, which sets forth the responsibilities of the Parent Committee.

IE staff found that the procedures for Parent Committee selection were widely advertised in the community through newspapers, community bulletin boards and newsletters. Parent Committee members are elected once a year, every year in October, for terms of 1-3 years. Parent Committee officers are also elected every October. The Parent Committee secretary reported in an interview meeting that there are 40 people on the Committee, including 2 students and 1 teacher, 38 are parents of Indian school children and all 40 are voting members. However, it was noted that the application shows 38 committee members. Parent Committee meetings are held monthly and are publicized in the schools and in a newsletter. Local Education Agency (LEA) project staff have attended every meeting, according to the parents.

IE staff also found that the LEA made its records available to the Parent Committee members. Title IV regulations, records relating to the Parent Committee activities and official correspondence were available as well. The LEA staff work in preparation of parent meetings was excellent and should not be overlooked. Minutes of past parent meetings provided this evidence. The committee noted by interview that the LEA does not advertise project job opportunities in the community and expressed an interest in having these positions better publicized. However, OIE staff did review hiring procedures and found them in compliance with local school district policy and as required by parent committee bylaws. The Parent Committee was pleased with the LEA orientation on Parent Committee responsibilities and program regulations every year after new members elections, although they did express interest in more training. The committee expressed the value of training experiences received by interacting with the other parents in different geographic regions of the United States. IE staff found that the LEA provided adequate information regarding the current Title IV, Part A program and application which allows active participation in discussions of ongoing issues.

The Parent Committee of Robeson County is commended for cooperatively working as a team member with the LEA and effectively meeting the needs of the children of this community.

Recommendation

It is recommended that parent committee training be continued on a local and national basis.

Needs Assessment

A review of project files showed that a comprehensive needs assessment was conducted in 1977. This has been updated on an annual basis and utilized in prioritizing and ranking of needs for program planning and development. The annual Needs Assessment was conducted at the end of each school year and was designed to evaluate the program as well as rank program components for future programming.

IE interviewed Mr. Donald Locklear, Director of Operations of the Robeson County Title IV, Part A project, on the needs assessment. He said the needs assessment was updated annually in the Spring. IE staff reviewed the 1980 Needs Assessment and Project Evaluation Instrument that was mailed to all 5,400 Indian Parents, all Indian high school students, all teachers, principals, aides and board members. The response to that mail out was: 263 parents, 188 teachers, and 2,312 students for a total of 2,763 responses. A copy of the "Robeson County Indian Education Needs Assessment and Program Evaluation", was reviewed as well. This comprehensive document was developed by a consultant to the project who analyzed the results of the survey.

The major needs identified in this project were as follows: Educational Enrichment, Cultural Enrichment and Supportive Services, all of which were identified by IE as being addressed in the program design.

Both the original Needs Assessment and the yearly update were analyzed in detail. In addition to these methods, other appropriate measures such as academic achievement levels and standardized test scores (specifically the North Carolina Competency Test) are considered in assessing the needs of the children. Interviews with some school principals on our visitations indicated concern as to the lack of input they were given into the needs assessment. This view was also expressed by some of the members of the Parent Committee. However, methods of the Needs Assessment are in compliance with 186a.21 of the Federal Rules and Regulations for Part IV, A conducting a Needs Assessment.

Project Design

In evaluating the Robeson County Title IV Indian education program project design, interviews were conducted with project staff, LEA principals and Robeson County students at the following site locations: Pembroke Junior High, Pembroke Senior High, Union Elementary, Magnolia School, Fairgrove School, Prospect School and Fairgrove School. Tutorial and Arts & Crafts programs were in operation and in compliance with objectives stated in the original application. Students worked with paraprofessionals in small groups with the intent of improving Literacy Skills and introducing traditional Native American Arts & Crafts. The Literacy Skills Component appears to be well received by the students and they expressed positive feelings about its benefit to their over-all academic achievement. The Arts & Crafts activities were enjoyed by the students, however, the students as well as the teachers and project staff believed the time was too short for any significant accomplishments. Some of the elementary schools indicated they had Arts & Crafts instruction only for a 3 week period. The newly established Indian Youth Center was reviewed as operating well with good student participation and was able to offer Robeson County students a number of after-school culturally based activities.

The Director of Operations, Mr. Donald Locklear, was interviewed about the Robeson County internal evaluation system. It was found that a comprehensive internal evaluation system has been designed to monitor all program components. Students participating in the literacy skills & academic coaching programs are evaluated on the basis of the California Achievement Test or the North Carolina State Competency Test and are given pre-and post-tests in their area of study to determine future needs and placement. Staff members receive training during the first few weeks of the school year and receive four formal evaluation conferences at appropriate intervals. The majority of the interviewed staff members believed the evaluation process to be of assistance, however some indicated an interest for more in-service training.

In conclusion, the project design and evaluation components are in compliance with federal regulations and following the plan set forth in the original application.

Recommendations

It is recommended that consideration be given to expanding the length of curriculum from 3-6 weeks in some areas of arts & crafts to longer sessions as determined by the Needs Assessment.

It is recommended that further in-service training be considered for employees.

506 Forms

The number of 506 Forms reported in Robeson County in their 1980 count as of April 7, 1980 was 8,726. (Their 1981 OCR count as of March 18, 1981 was 8,507).

The total number of 506 Forms on file as of March 16, 1981 was 8,697.

A random sampling of (100) 506 Forms on file was thoroughly reviewed. This selection was made by sampling 3-6 forms from 22 schools-including 15 elementary and 7 junior high and high schools.

- Of these 100 forms, 99 forms were complete with parent signatures. Only 1 form was found not to be signed by a parent.
- 97 forms were complete with the date they were signed, and 3 were not dated.
- 99 forms were complete with Birth Certificate documentation as membership identifiers, which is the common practice of the area, and is acceptable for student eligibility according to a November 20, 1980 letter from Judy Baker, OIE.
- All of the 100 forms had acceptable documentation for the child, natural parent or natural grandparent as being a member of a tribe, band or organized group of Indians.

All forms thoroughly reviewed were acceptable with the exception of the form that did not have the parent's signature. All other forms were viewed and accepted as listed by the LEA enrollment records.

Procedures used with a Computer Terminal for tracking 506 Forms were observed and reviewed. Student names selected at random from the enrollment list were checked to see if they were on the computer run. IE found the computer to be a very efficient way of compiling eligible student information. However, it was noted that all of the names were not yet registered on the computer.

Copies of documentation pertaining to the 506 Forms included the following:

1. Documentation of an "Explanation of the Discrepancies in Total" regarding Indian student count.
2. An October 25, 1980 letter from Purnell Swett (Superintendent of Schools), regarding "proof of membership".
3. A follow-up letter of November 20, 1980 from Judy Baker (then Acting Associate Deputy Assistant Secretary for the Office of Indian Education), accepting birth certificates as membership indentifiers.
4. A list of all Robeson County Indian Student Enrollment by school, for the 1981-82 school year.

Recommendations

It is recommended that Robeson County continue the process of completing all of the 506 Forms on file by securing a parent's signature, the date the form was signed, and eligible enrollment identifiers in order that all eligible children can be counted.

It is recommended that Robeson County continue the process to show all eligible Indian students on the Computer Terminal.

It is recommended that the programming of the computer be expanded to include the curriculum of Title IV, Part A eligible students, budget data, inventory data etc.

Project Administration and Management

IE staff met with Ms. Ruth Dial Woods, Project Director; Mr. Donald Locklear, Management Support Officer, on May 4th, 5th and 6th at Robeson County School District Office, to review project administration, management procedures, and pertinent records.

IE reviewed the project's financial ledger and found that it was in compliance with 45CFR sec. 100a.702, which requires that grantees use proper fiscal control and fund accounting procedures. The ledger recorded Title IV funds separately. As a sample check, IE reviewed Personal Service Voucher Register #1907 dated 1-16-81. It was made out for \$561.00 in payment of the monthly salary of a specific tutorial aide. IE then interviewed this aide to determine that the voucher was correct and that the aide had actually received the funds.

IE also viewed and found that the project's travel records were in compliance. The travel log was kept to monitor the use of Part IV, A vehicles leased by the project and out-of-town travel records were viewed and found to be satisfactory.

IE examined check #14210, dated 12-10-80. It was made out to the consultant, for \$6,667.00 which is 1/3 the annual payment for his service. IE reviewed the LEA's contractual agreement with the consultant which was signed 10-30-80 and stipulated he be paid a fee of \$150 per day, \$40 per diem 25c a mile for travel (in line with district policy) and \$15 a day taxi and parking. This contract was satisfactorily checked against the objectives of the LEA's application.

It was determined that as required the project did maintain financial eligibility standards for receiving medical and dental care funded by the project. Information about these standards was on file.

The project's equipment inventory records were reviewed. The most recent inventory conducted was in May 1980, at which time some items purchased with Title IV, A funds were recorded by district records as missing. The project director cited the difficulty in tracking lost items and noted that many of them were several years old and had greatly depreciated in value. The director discussed the possibility of signing old equipment items over to the school district because they were no longer worth using or of much program value. The LEA-IE Director indicated she would send IE a list of equipment acquired before 1977 with proposed intent.

The project maintains forms which record personnel time and attendance, the staff schedule, monthly staff reports and monthly participant activity reports. The personnel and monthly staff reports forms allow project management to monitor work activities. The monthly participant activity reports allow management to monitor if the students were actively under taking the activities designed for them.

During the visits to several individual schools (Pembroke Junior and Senior, Union Elementary, Magnolia, Fairgrove, Prospect, Maxton) some of the principals stated that they had very open communication with project management, and that lines of authority were very clear due to the recent centralization of authority at the district level.

It was found that communication with other LEA projects across the state and nation was being exercised by the project direct and parent committee in order to maximize local opportunities for Indian children.

It was also found that the project's personnel policies were in compliance. IE staff reviewed the state salary schedule for public school personnel to see that project staff salaries were similar. The project's staff policies were in compliance with the school district's policies. LEA project staff and school administrators all received copies of the project's Administrative Manual which sets out personnel policies for reference in accordance with regulatory requirements. Although this manual was done in 1977-1978, the information it contained was still applicable for the FY 80 grant year.

Other specific Administrative procedures and policies reviewed were as follows:

1. FY '80 Budget, Revisions and Correspondence
2. Format for Computerized Indian Student Count/Enrollment
3. Policies and Procedures for Administration of Medical/Dental Services
4. Independent Evaluation Instruments (by United Specialists)
5. IEA Telephone Log Sheets
6. Personnel Time and Attendance Reports (Time Sheets)

-7-

7. IV-A Staff Personnel Evaluation Form
8. IV-A Personnel Action Forms
9. IV-A Equipment Inventory
10. FY 81 Open Public Hearing and FY 81 Application information (included fact sheet on 81 application for parent committee and others)
11. IV-A Staff Schedules
12. IV-A Project Overview
13. IV-A Administrative Manual
14. IV-A Project Handbook FY 80 (circulated to principals, central administration staff, all IV-staff, all parent committee members)
15. Long Range Study/Evaluation, Dr. Noley (Instruments)
16. Program Component Participant List
17. IV-A Monthly Staff Reports (Internal Evaluation)
18. Monthly participant Activity Report List
19. IV-A Project: Independent Project Evaluations
20. Curriculum Materials
21. IV-A Curriculum Content guide
22. Creative Writing Project (work of students)
23. "Indian Pride" Project Newsletter

Recommendations

The project maintains its inventory on a form containing the following categories: Quantity, Description, Serial Number, LEA tag number. It is recommended that the categories Purchase Cost year and Current Value be added to aid in determining the current dollar value and use of equipment. This inventory should be completed as soon as possible.

Sincerely,



Richard Snowden
Acting Team Leader
Team 1 - East Coast
Division of Program Operations
Indian Education Programs



UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, D.C. 20202

Ms. Swett
ATTACHMENT H-2

DEC 17 1985

Dr. Purnell Swett
Superintendent
Robeson County Board of Education
P.O. Box 1328
Lumberton, North Carolina 28359

Grant No.: N008500960

Dear Dr. Swett:

On November 21 & 22, 1985, Ms. Valerie Grant and Ms. Hattie Ballard of the Indian Education Programs staff conducted a program audit of your 1985-86 Title IV-A Indian education project. The program audit included a review of your student eligibility records, project management and the project's progress in meeting the educational needs of Indian students in your school district. A summary of the findings, corrective actions and recommendations follows.

FINDINGS:

- o The approved project calls for thirty-one full-time and two part-time staff. All are currently on board and thirty-two are Indian. The staff are subject to LEA salary structure and personnel policies. The LEA follows accounting procedures established by the State education agency for all programs. A review of the voucher and expense items on the computer printout indicate that funds are being spent in accordance with the approved project budget.
- o The purpose of this year's project is to address the needs of Native American students for cultural awareness, academic skills improvement, summer enrichment and supportive costs.
- o The members of the Parent Committee (PC) are elected by the Indian community. Members serve one-year terms and may be reelected. The bylaws of the parent committee reflect current operating procedures. The PC participates in the needs assessment and evaluation of the project. Their respective roles, as defined in the regulations, are understood and are being carried out. The PC-LEA relationship appears mutually supportive.
- o A plan to evaluate the FY 1985 project has been formulated. It will measure the effect of the project on Indian students.

Page 2

- o The number of ED 506 forms on file at the time of the site review was 8,914. They were examined for completeness and correctness. There were 8,658 forms found to be complete and correctly filled out. Two hundred and fifty-six lacked membership verification, fifty forms lacked parent's signature.

CORRECTIVE ACTION:

- o To be considered complete and acceptable, the ED 506 form must contain the student's name; name of the tribe, band, or other organized group of Indian with which the student, his or her parent(s) or grandparent(s) claim membership; substantiation of membership such as an enrollment number, State charter on tribal affiliation and a parent's signature.

COMMENDATION:

- o The project is commended for the effort they have made in completing the ED 506 forms and the splendid job being done to meet program objectives.

Please provide a written response to any corrective actions set forth above, within thirty (30) days of the date of this letter.

I thank you in advance for your kind attention and consideration in these matters. If you have questions concerning this report, please contact Ms. Grant at (202) 732-1913.

Sincerely,



Frank Anthony Ryan
Director
Indian Education Programs

Mr. KILDEE. Thank you very much, Ms. Woods, for your testimony.

I have some questions. I really appreciate your testimony. In talking to the Department, and I have been talking to them on this question for as many years as I have been involved in this responsibility of oversight in Indian education, they keep telling me what they desire is to serve eligible children, and they keep emphasizing that, but also, to spend Federal dollars in accordance with the law.

Let me ask this question since that seems to be their concern. How great is the problem of ineligible students being served? Are they trying to solve a problem that maybe doesn't exist? Could any of you address how great is this problem of ineligibility? Dr. Williams.

Mr. WILLIAMS. In the State of Oklahoma, our director of Indian education with our State department estimates that one-third of the children that are currently in Indian programs do not meet the qualifications of 506 because many of them were covered with good-faith letters.

He also estimates that the maximum of abuse was a parent coming to the school and saying their child was Indian and not being, would be something less than 5 percent. Now, that is difficult to prove. There are no hard figures on that. Because in Oklahoma, it is difficult to look at a person if they have one-two hundred and twenty-eighth Indianness and say "You are an Indian," but they do have that portion of Indian blood.

Whenever you have programs the size of the Indian education program, there is always abuse. It is impossible to have a program without some abuse. I abuse my wife's share of our family budget some months, she does some months. It is a personal kind of thing, sort of a style of living.

I would like to eliminate all abuse and serve those individuals who need to be served most. But in our small communities in Oklahoma, the structure is so tight that we have many children that are of Indian descent that are not being served because it is not popular to say you are an Indian unless you are a quarter, a half or a full-blood.

So I see abuse in the State of Oklahoma from not serving students because of the complexity of the society with no reservations in Oklahoma and all of our Indians thrown together, I see some of the abuse there where in a larger community where everyone in the community does not know that I am just part Indian, I will sign this so my child can participate in their program. So in the metropolitan areas, I think we probably get a more accurate count of those families that have a small percentage of Indianness, but the smaller the community and the further west you go in our State, the less popular it is to be an Indian.

Mr. KILDEE. Are you saying then that two-thirds generally are able to supply some number, and one-third generally a letter of good faith or some type of family statement?

Mr. WILLIAMS. Or some type of family statement.

Mr. KILDEE. But in general, 5 percent or less would be really ineligible as to their actual objective criteria. Any other comments on that as to the size of the problem?

Ms. REED. I feel that in Flint, MI, especially, most of our people come from out of State and other States. It has been my experience, in making home visits, especially that the number of people that say they are Indian and really do not qualify is very low, but the problem is they do not have the documentation. I have been shown family Bibles where it is stated on there the grandparent was Indian coming out of such and such a town, but no longer can we use that. They say that that is not—family Bible is not documentation.

Some of the people that are having the problem with their documentation are coming out of other States from State-recognized reservations that are now no more in existence. So they cannot go back and find that. And I am told if they do go back, they will have to find affidavits from the area of people stating there was a reservation there once and the name of the families on that reservation. But 30 years is a long time to go back and get that kind of documentation. The population of the United States is so mobile, that I would doubt they could go back into those areas now, after 30 years, and get that kind of affidavit from people.

The problem is really complex. I feel, in Flint especially, most of the people that say they are Indian are truly Indian to the extent, and their children do qualify.

Mr. KILDEE. In Flint, what percentage of the Indians served under this program are Michigan Indians, the Chippewa, Potawatomi, what percentage, as opposed to western Indians?

Ms. REED. In Flint, about one-fourth of our people are Michigan Indians, and certainly most of them should have their numbers, but they do not. Once they come into Flint, they do not go back to the reservation. They stay in Flint, and they make their living. They drop that back there, and they melt into the system, and some of them do not have documentation. I have been in Michigan over 50 years, and I have traveled around the State and know many of these families personally, so I know, but my word is not document for their 506 forms.

Mr. KILDEE. Yes.

Ms. WOODS. Congressman Kildee, I believe that those areas that might be serving ineligible children could best be identified through the program audits which the Office of Indian Programs has been expeditiously conducting. Robeson County has its audit once every 3 years, and I think a couple stuck in between. And I did not—I think again the issue is not that projects are serving ineligible children, but rather that ineligible by whose interpretation? You know, if we at the local level cannot be given the authority to decide what are the official practices of our community and what are our official relationships with the State and Federal Government and how do we go about identifying our people, and someone comes in and says that you can only identify an Indian if he or she has a number, then that then constitutes serving ineligible children by someone else's standards or someone else's interpretation.

But I would hate for us to concede that there are ineligible children being served across this country and again try to put all of the projects in one basket if we have trouble in certain areas. If that is true, those particular areas should be dealt with by the

office and all efforts given to the folks to help them strengthen their programs and correct the matter.

Mr. KILDEE. Ms. Reed, who notifies the Indian students when they are ruled ineligible for participation?

Ms. REED. In Flint, we are really concerned on this. In the past, we have written a letter stating that the field workers has come out, and she says that "Your child is ineligible from our office," but I—we have always felt that we should not do that. That letter should not come from our office, it should come from the Office of Indian Education in Washington here, who has made that statement. I feel that it breaks all trust in our program when we have to send out a letter to that extent.

That concern is not only mine, it is a concern of the whole Genesee Indian Education Community Association in Genesee County, which consists of seven title IV's in and around Flint.

Mr. KILDEE. Have you experienced any problem, Mrs. Reed, or difficulty with what is the definition of an organized group of Indians?

Ms. REED. Yes, we have. And we have sent then Dr. Gipp a letter asking what constitutes an organized group of Indians, and to my knowledge we never got any explanation or reply to that letter. Would this consider local Indian centers that give service? And they do require their quarter bloods usually that get services from those agencies, would this go into the job training where they ask for quarter blood standing? We do not know who to go to on this organized group of Indians.

And in Flint—in Michigan, they do take the word of the Northern Michigan Ottawa Association. Now years ago I know that was not a chartered group, and I do not think it is chartered yet. Yet they do take the word of that organization as being valid. So what we would like to know is what constitutes that organized group of Indians.

Thank you.

Mr. KILDEE. Through the efforts of many, including myself, we were able to delay implementation for at least 1 year. I am not sure what is going to happen now. I suspect perhaps they are going to have more specific eligibility rules for school year 1987. Working with Dr. Davenport on this issue we could say we had one success at least to delay it for this school year. If you have any suggestions, either here or in the next few weeks, as to how we might modify their proposals to make it more possible for you to serve those Indian students, submitting them would be most helpful. I know very often there is a certain fear of trying to help something that you find is not acceptable in the first place, but I think we have to balance that with the probability there is going to be some changes for school year 1987.

Yes, Dr. Williams.

Mr. WILLIAMS. One of the things that I think is important that we alluded to in our document that has just been alluded to in the discussion here is the consistent leadership of the Office of Indian Education. You talk about auditors coming out and auditing programs. In the State of Oklahoma, we find that the auditors that come frequently have transferred from another division, have been with the Office of Education 10 or 15 years. You are not going to

tell a person like this they don't know what they are doing because they are in the Office of Education, they know what they are doing.

And yet I had a branch chief ask me, a new branch chief, what does a CDIB mean? The Office of Indian Education is not in servicing their people. They are not giving them the training they need to come out and make these types of decisions.

I had a gentleman sit and look at a program, and here is a letter signed by the chief of the tribe saying this person is an Indian, he says it doesn't have a number, I can't accept it. I looked at him and said "Go tell the chief his people are not an Indian." He said "I can't accept it, I just go by the rules they give me."

I think that some of the auditing they are doing is very inadequate, and I think that possibly the Office of Indian Education can spend some of their moneys training their people before they come to the field. And when new regulations are passed forth that there is an agreement so that all States are being treated alike, if we are going to have one set of rules for one State, then let's have the same set of rules for all States that are involved in this program. We find in the past that has not been true.

Mr. KILDEE. Let me make this suggestion. I really appreciate your public testimony. I think you helped define the situation and the problem. In the next few weeks, I would ask all five of you to, if you feel that you have some further information that might be helpful in trying to modify the eligibility requirements, assuming that they are going to be publishing, please feel free to contact me directly by telephone or any other means. We can have some conversation, or, with Mr. Lovesee, or with Mr. Hartman and some suggestions as to how we might guarantee we don't drop those students who should have been served.

If you have any suggestions at all, we can make it very informal. This formal hearing is extremely important, but any informal context may be helpful. I am determined to make sure we carry out our obligations to the Indians of this country. I am morally committed to that. After this formal hearing, we will keep the informal channels open, and feel free to contact myself, Mr. Lovesee, or Mr. Hartman on that.

We have been joined now by a person whose devotion to our obligations to assist the Indians in this country is well known. Mr. Gunderson.

Mr. Gunderson.

Mr. GUNDERSON. Thank you, Mr. Chairman.

I apologize for being late, but like everybody else, I am trying to do a lot of things at the same time.

I believe you alluded to a question I was going to ask, which is in lieu of the regulations. What can we do to make sure we are able to respond to the General Accounting Office audits and reviews that might occur in the future so we do not some time down the road run the risk of having major allegations that we are allowing anyone who says they are native American to be in the program?

I am trying to find the middle ground here, which is not always easy. I think you have addressed that question, and we will leave it at that.

Thank you very much.

Mr. KILDEE. Thank you very much, and I want to thank the panel for your assistance. Let's keep those informal channels open. Thank you very much.

Our next panel consists of Dr. Joseph Linscomb, associate superintendent, instruction, Los Angeles Unified School District, Los Angeles, CA; Jim Thornton, Indian education coordinator, Coos County, Coos Bay, OR, who has testified before us before also; and Jim Egawa, coordinator, Indian education, Tacoma Public Schools, Tacoma, WA. If they would come forward.

Dr. Linscomb.

STATEMENT OF JOSEPH LINSOMB, ASSOCIATE SUPERINTENDENT, INSTRUCTION, LOS ANGELES UNIFIED SCHOOL DISTRICT, LOS ANGELES, CA

Mr. LINSOMB. Thank you. I am Joseph P. Linscomb, associate superintendent, instruction, of the Los Angeles Unified School District. I have submitted written testimony, and as I have listened to the testimony before me this morning, I would be quite redundant if I were to repeat what I have in the written testimony. However, I would like to make one or two significant points relative to our own school district.

First of all, I am from the Los Angeles Unified School District, which is the second largest in the country. There are over 570,000 students in that district.

My second point related to that is that California, in the 1980 census, was shown to have the greatest number of American Indians in the United States. Given the fact that in California there is that large number of Indians, and Los Angeles has a student population of 570,000 students, one would believe we would serve a relatively large number of Indian students. Because of the identification problem in our district, we this year believe we can serve only approximately 600 students. We believe if we were able to use the good-faith letters we have on file, we would about double that number. But because of the controversy and the indecision and the problems generated around the identification problem, we believe there is another one-third that number of Indian students residing within our district who will not be served.

In Los Angeles, we have the intention of serving only those students who are eligible. Our problem, of course, is trying to meet the requirements in identifying those youngsters, particularly acute is the problem in an urban area, in a large metropolitan area, where Indian students range over the 400-square-mile Los Angeles Unified School District.

We in Los Angeles believe that if it is possible to remedy the regulations so that Indian students can meet the eligibility requirements in a simplified fashion, we would be able to provide the services of this program to all the students who are indeed eligible but not able to prove that eligibility within the school district. We would like to recommend, of course, that Indian students be recognized by the fact that they identify with the Indian culture, that they are involved in Indian organizations, and that their parents say that they are Indian students.

If that is the end which can't be met, we hope the committee will be able to work with the department in coming to a middle ground that will indeed open the eligibility identification requirement up to a much larger number of students.

Thank you very much, Mr. Chairman.

[Prepared statement of Joseph Linscomb follows:]

**PREPARED STATEMENT OF JOSEPH P. LINSOMB, ASSOCIATE SUPERINTENDENT,
INSTRUCTION, LOS ANGELES UNIFIED SCHOOL DISTRICT, LOS ANGELES, CA**

I am Joseph P. Linscomb, Associate Superintendent, Instruction, of the Los Angeles Unified School District. On behalf of our Superintendent, Dr. Harry Handler, I wish to thank Chairman Hawkins and the committee members for the opportunity to present testimony regarding eligibility requirements for the Indian Education Act.

The information and the points of view I bring, I believe, reflect the concerns of many of the nation's large urban school districts. We, in our District, feel the frustration created by the recent directives regarding proof of eligibility for participation by American Indians in Title IV funded instructional programs. These directives seriously hamper our efforts to provide supplementary educational services to students of American-Indian ancestry who, by law, are entitled to them.

These Indian students are enrolled in more than 300 of the District's schools and represent 94 American Indian tribes, including Cherokee, Navajo, Apache, Choctaw, Sioux, Blackfoot, Mission, Shoshone, Chippewa, Iroquois and Yaqui.

Indian students enrolled in District schools are from varied backgrounds. Cultural reinforcement is strong in some homes while very limited or nonexistent in others. The majority of our Indian students enter school with adequate English language experiences, but in some homes, a tribal language is spoken.

A survey conducted by the District several years ago identified 50 Indian languages spoken in the homes of our Indian students! Additional survey information revealed that the socio-economic backgrounds of these students range from lower income to upper-middle class. While some students come from single parent homes, most parents are employed.

The academic skill level of our Indian students ranges from below grade level to gifted. Over the past few years, the number of Indian students being identified for accelerated classes has increased in schools participating in the Indian Education Program, as has the number of Indian students expressing interest in college or some other level of post high school education. However, large numbers of Indian students are performing below grade level expectations, have poor attendance habits, or have developed a pattern indicating they might not complete high school graduation requirements. These students need a great deal of assistance.

Metropolitan Los Angeles is an area containing over three million people. Our school district has over 578,000 students. In the Federal Census of 1980, more California residents identified themselves as being of American-Indian origin than did the residents in any other state in the nation! As verified by the 1980 Census, of the four states with the largest American-Indian populations, California registered the largest percent increase during the 1970-80 decade, more than doubling its Indian population!

Yet, given these statistics, the eligibility requirement based on proof of tribe "membership," has resulted in the fact that the Los Angeles Unified School District can verify only 655 students (of a total student population of over 578,000) who meet that criteria. Had we been able to count students whose "good faith letters" are currently on file with our District, an additional 437 Indian students would be immediately eligible for assistance. This total figure of 1,092 represents only one-third of the number served by the District in the 1980-81 school year.

We know that in a school district of our size there is a much larger number of students who identify themselves as American Indian, who participate with their families in Indian cultural activities in their communities; and who have heard the stories of their cultural past from their elders. Yet, because they do not have or cannot locate a number somewhere, they are not candidates for available and needed services, and are denied access to remedial instruction, guidance and counseling support, mental and physical health programs, as well as opportunities to engage in activities designed to maintain their knowledge of and pride in their rich cultural heritage.

The concern for assuring positive proof of identification was not very evident in the early 1900's when Federal agents were sent to reservations such as that of the Cherokee to record the names of tribe members. Since the agents did not venture outside the geographic boundaries determined by the government, many hundreds of Cherokees living just across an imaginary line were never registered. Does that mean they never existed? The children and the grandchildren of these tribe members are just as entitled to benefits due them as are the descendants of the tribe members whose names are in the dusty ledgers sitting on some obscure shelf.

Within current regulations, even those students whose ancestors or parents were fortunate enough to get an official "number" are deprived of services for long periods of time. When completed certificates of eligibility are sent to appropriate government offices for verification, the time delay in their return can be as long as a year!

Continuous and contradictory changes in policy and funding levels, long delays, and the air of suspicion created by mandatory and cumbersome paper work and the checking/cross-checking of credentials, have not only seriously depleted the number of eligible students under the Indian Education Act, but have had a negative and demoralizing impact on the American-Indian community. Many of them, through no fault of their own, have no acceptable way of proving to the government what they know to be true, and their word and good-faith testimony is considered worthless.

I would bring to the attention of this committee the fact that the American-Indian students are the only ethnic group in the nation who are required to have registered and documented proof that they are of the ethnicity they and their parents say they are! This seems discrimination of the highest order, and is punitive against students who could derive much benefit from the additional instructional assistance to which they are entitled.

I urge this committee to recommend amending these eligibility requirements in favor of acceptance of a signed statement or certificate in which American-Indian parents or students affirm and attest to their ethnic origin. We believe this would be highly accurate since, in our experience, few people falsify ethnic origin. This action would increase the numbers of entitled students who receive service, would reestablish fairness and equity to the Indian Education Act, and would demonstrate to the Indian community that the same "good faith" extended to all other ethnic groups also applies to them. This recommendation would also reduce the administrative burden involved in the present system of eligibility verification, and release school personnel from time consuming paper work totally unrelated to furthering education so that their services could be directly related to serving students.

Indian students in urban communities need the assistance provided by the Indian Education Act. We appreciate your efforts to insure the participation of every eligible student in these benefits on an equitable, fair basis.

Thank you.

Mr. KILDEE. Mr. Thornton, glad to have you back here.

**STATEMENT OF JIM THORNTON, INDIAN EDUCATION
COORDINATOR, COOS COUNTY, COOS BAY, OR**

Mr. THORNTON. Good morning. My name is Jim Thornton. I am Cheyenne, and for over 10 years I have worked with six title IV Indian education programs on the Oregon south coast as Indian education coordinator. As chairman of the Oregon Indian Education Association's Legislative Subcommittee for Policy Development, I am very pleased to provide testimony this morning for Oregon Indian education programs.

Title IV Indian education programs are helping Indian students in Oregon. On the Oregon south coast, Indian education programs are providing necessary support for Indian students in school. Beginning in September 1976, the office of Indian education began a more formal process of identifying Indian students for program services. At first the forms were simple and easy to complete by parents.

Then in 1979, the three-part OE form 506 was introduced. Not only was it to be used to identify and certify eligible Indian students for services, but also to be used for that 1 year only as a means of providing data necessary for a title IV definition of Indian study. Since that time, the OE form 506—approved August 1979 and scheduled to expire August 1980—has been used by the Indian education programs office as a means to eliminate eligible Indian students from services.

One of the questions included on the OE form 506 asks for the "membership number of enrollment number, where applicable." IEP has made it their policy that the information is now required, whereas authorizing section 1148 of Public Law 95-561 and section 301(a)1 of Public Law 96-88 merely provides authority to establish 506 forms and seek an accurate program profile. It states, "Nothing in the requirements of paragraphs (1) through (5) of this subsection shall be construed as changing or restricting the applicable eligibility definition set forth in subsection A—the definition of 'Indian'—of this section." Membership numbers are not even mentioned, and many individuals are unable to obtain such certification of their Indian heritage.

Earlier this year, Congress passed House Concurrent Resolution 276 to allow school districts to submit new title IV Indian education proposals without the IEP derived rule that all Indian students must have membership or enrollment numbers on file. Although this was a great help this year in submitting proposals, it did not offer a long-term answer since it was to serve for 1 year only. That is why this chance to appear here today and provide testimony is so important.

The Bureau of Indian Affairs' Johnson-O'Malley Indian Education Program is limited to serving only Indian students who are registered members of federally recognized tribes who meet stringent blood quantum requirements. There is little duplication of services between JOM and title IV Indian education programs as evidenced by repeated congressional studies. Both programs serve the needs of Indian students in different ways and often meet the

need of different Indian students. Title IV Indian education provides services to a broader category of Indian students; including: Members of terminated tribes, of whom there are many in Oregon; first- and second-degree descendants of federally recognized tribal members; members of nonfederally recognized tribes; and anyone considered by the Secretary of the Interior to be an Indian for any purpose.

"Requiring" enrollment numbers would also eliminate other currently eligible Indian students under title IV Indian education: Those who are adopted or whose parents have been adopted; those who have multiple Indian tribal heritage but without enough blood quantum to meet minimum tribal enrollment requirements; those who have dislocated families and resulting broken ties with tribal authorities; those who have parents unable or unwilling to contact other family members and tribal authorities, either through death or divorce or single status; those who have lost or destroyed their family and/or tribal records; those who have tribal authorities who are unable or unwilling to search available tribal records; those who have parents who are distrustful of governmental interference and who are unwilling to release enrollment information; those students with Canadian Indian heritage; those students in local children's protective services and/or juvenile services jurisdiction; and those families who have only recently begun the arduous task of tracking family genealogy.

In an effort to clarify the OE form 506 so that it becomes a functional document which provides adequate information for a local program data base and meets local community needs while satisfying necessary eligibility requirements, members of the OIEA Legislative Subcommittee for Policy Development took a 506 form and cut and put it back together again in more usable form. Since the current OE form 506 is the same 1979 form that was set up to be torn apart for the 1-year study, it was designed to eliminate recognizable personal information by using the center part of the form only for the Indian definition study, we moved some of the requested information to make it flow in a more sensible manner. This revised draft 506 form was then sent out to all Oregon title IV Indian education programs for comments and recommendations.

Results from Oregon Indian education programs who responded resulted in the following recommendations: Some of the information requested was not necessary since project directors could locate it. This included the name and address of the organization which maintains membership data—project directors have this information already. Information currently requested of the parent on the tribe, band, or other organized group as to its status is also not necessary for determining Indian student eligibility for services.

Other changes would eliminate the need for two-parent signature blocks and add the child's birth date to provide greater use in identification. A block to give the address of the school that the child currently attends when the form is completed is also unnecessary. When asking for the name of the parent or grandparent who claims membership, full names would be most helpful. When membership numbers are not applicable, then the back of the form could be used to provide for family tree information. Other evi-

dence could also be attached for individual cases as needed, such as a statement from an adoption agency, et cetera.

Any change in the OE form 506 should be made so that existing forms on file remain valid until that child leaves the program. Title IV Indian education was originally designed to be a broad-based, locally determined program to meet the special cultural and academically related needs of Indian students.

Its purpose was also to provide for parental participation in the education of their children. Requiring another form for those students already enrolled would jeopardize the trust that has developed between programs and parents over the years. Proposed changes in the OE form 506 would not require additional information from the current—8/79—form, except for birth date; so existing forms would be acceptable in the future.

Therefore, proposed OE form 506 should include: Why the information is requested; the definition of who is eligible by including the definition of "Indian"; name and address of eligible child; grade and birth date; name of school, who is the member—child, natural parent, natural grandparent; full name if other than child who claims membership; name of tribe, band, or group, membership number—if applicable, and check if it is an enrollment number, allotment number, or other—explain; if none, explain how the person meets the definition of Indian given at the top of the form; and parent signature and date attesting to the information and giving consent to release the information to the title IV, part A, parent committee.

Congress has demonstrated a commitment to the education of Indian children in the past; we know that they will not let an administratively derived "rule" eliminate eligible Indian children from services. Through adhering to the initiating law and regulations, Indian education services will continue to serve all eligible Indian students in the future.

Thank you for this opportunity to appear before you and provide this testimony this morning.

Mr. KILDEE. Thank you, Mr. Thornton.

[Prepared statement of Jim Thornton follows:]

**PREPARED STATEMENT OF JIM THORNTON, BOARD MEMBER, OREGON INDIAN
EDUCATION ASSOCIATION, COOS BAY, OR**

The Indian Education Act was written in 1972 in response to national statistics regarding the educational needs of Native American Indians/Alaskan Natives. Section 302(a) of the initiating legislation states: "In recognition of the special educational needs of Indian students in the United States, Congress hereby declares it to be the policy of the United States to provide financial assistance to local educational agencies to develop and carry out elementary and secondary school programs specially designed to meet these special educational needs".

The very strength of Indian Education program effectiveness has been centered in the involvement of Indian parents, school personnel, and Indian students in meeting locally observable needs of Indian children. The parent committee involves Indian parents, students, and schools in the educational process . . . often for the first time. Parent committees are not simply rubber-stamp approvals for school districts to obtain Federal funds. Parent committees actively help plan and monitor supplemental programs developed to meet the local needs of Indian students.

The national evaluation study conducted by Development Associates and reported to Congress in June 1983 stated: "from the data it is clear that the Congressional intent of establishing a mechanism powerful, yet flexible enough, to allow the many diverse Indian tribes and community groups to work with their local school systems to develop programs to meet the 'special education or culturally related academic needs' of Indian students has largely been achieved" (page 352). ". . . The study's findings also indicate that continuing educational needs exist" (page 354).

THE 506 CERTIFICATION FORM:

The process used by the Indian Education Programs office in Washington, D.C., has undergone many revisions. There have been three different formats used to identify and certify eligible students since the program's inception. The office has sent out numerous letters to interpret purpose and use of each form. The first form (Form 1-1) was the first attempt to standardize the process. In September 1976, OE Form 506 (9/76) was introduced with a cover letter that stated: "The individual form is to be completed and signed by the parent or legal guardian, or by the student himself if age eighteen. The forms are to be returned to the LEA. The LEA will then share the information with the Indian Parent Committee for purposes of review." In 1977 a sample Office of Indian Education letter to parents stated, "Primarily the form was designed to obtain an accountable method of Indian student enrollment certification for Title IV, Part A grantees. Your signature on the form brings the certification process directly into your local Indian community. Rather than have Federal, State, or school district officials carry out the certification process, the form implements the intent of the Law by placing an extremely important responsibility in the hands of the parents and Indian children."

Initially, Indian Student Enrollment forms were simple, easy to complete, and required, "As the MINIMUM requirement for eligibility, the student must have at least one (1) grandparent who is a tribal member as defined above" (the definition of "Indian" contained in the authorizing law). The information requested included: name of parent or legal guardian, address, name of school, name and grade of eligible child and tribal affiliation of student, parent(s) and grandparent(s). The single signature block stated, "This signature certifies that the information given above is accurate and true and that the tribal affiliation is in accord with the definition given. This form may be released to, and examined by, the Indian Parent Committee".

In 1979, a 3-part ED Form 506 was introduced. The cover letter to parents stated: "The 506 Form has been revised substantially to comply with the Education Amendments of 1978 (Public Law 95-561). In addition to requesting additional information to establish eligibility, the Congress has also directed that the Assistant Secretary for Education conduct a study of the Title IV definition of Indian." The cover letter further stated, "FOR THIS YEAR ONLY. The 506 Form will be used to provide data necessary for that study. Some of the questions on the form are necessary only for the study and are not necessary for establishing the eligibility of your child".

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Information required for student eligibility on the ED Form 506 in 1979 included: name and address of child; through whom the child claims eligibility (child, natural parent, or natural grandparent); name of tribe, band, or other organized group of Indians; "Membership number or enrollment number, where applicable"; "The information requested in Item D, including an explanation of how the person indicated meets the definition of Indian if you answer 'No' to question D.1." ("Is there an organization which maintains membership data for the tribe, band, or other organized group?"); school name and address; parent signature and address ("Note, however, that the consent to release the form to the parent committee is optional"). At this time the signature block was changed to read: "I understand that falsification of information on this form is subject to penalty under law". A separate signature block was now required to give consent to release the form to the Parent Committee for review. This form, approved 8/79 was scheduled to expire 8/80, was to be used for one year only to provide data for an Indian definition study. Nevertheless, it is still being required.

School districts received a letter, dated November 10, 1981, from the Director of the Indian Education Programs office which stated, "During the deregulation process, we will continue to accept 506 Forms for purposes of FY 1982 Part A grant applications, containing the student's name; name of the tribe, band, or other organized group of Indians with which the student, his or her parent(s) or grandparent(s) claim membership; a parent's signature; and evidence of a good faith effort on the part of the parent to obtain the information requested on the current 506 Form. Our intention is not to shorten the regulations but to reduce the substantive burden on the local educational agencies without sacrificing compliance with the law and regulations." (emphasis added)

This "good-faith effort" was negated by a November 25, 1985, letter to school districts, which required "completed" Indian Student Certification forms. The letter states in part, "Your attention is called to item Part I-C of the form in which the individual's membership number is required. The Department will accept the enrollment number of the individual or, where permitted under the statute, the parent or grandparent. If the enrollment number is not applicable, the Department will accept evidence of recognition by the Secretary of the Interior, such as by Certificate of Degree of Indian Blood, or certification of the individual's membership by the tribe, band, or other organized group of Indians." What was originally requested for purposes of the study (for one year) is now being required for eligibility as stated in the same letter: "The information on the 506 form is required under Section 1148 of Public Law 95-561 and must be completed."

Actually, Section 1148 of Public Law 95-561 and Section 301(A)1 of Public Law 96-88 merely provides authority to establish 506 forms to seek an accurate program profile. The Education Amendments of 1979, under Section 301(A)1 of Public Law 96-88 also adds: "Nothing in the requirements of Paragraphs (1) through (5) of this subsection shall be construed as changing or restricting the applicable eligibility definition set forth in Subsection A (the definition of 'Indian') of this section." The Indian Education Act states: "'Indian' means any individual who (1) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940, and those recognized by the State in which they reside, or who is a descendant, in the first or second degree of any such members, or (2) is considered by the Secretary of the Interior to be an Indian for any purpose, or (3) is an Eskimo or Aleut or other Akaska Native." Membership numbers are not even mentioned.

There is no justification for the Indian Education Programs office to require enrollment numbers to determine student eligibility since that information gathering was originally authorized to develop a program profile only. The request to obtain such information for the study is an option as evidenced by the statement added: "(where applicable)". Experience has demonstrated that many individuals are unable to obtain "certification" of their Indian heritage. Denying Title IV-Indian Education services to these individuals who can't supply the "required" enrollment numbers goes against the original intent of the law.

In response to Indian Education Programs office insistence on requiring enrollment numbers for Indian student eligibility for Title IV-Indian Education, Congress passed House Concurrent Resolution #276. This joint resolution directs the Indian Education Programs office to allow for "good-faith efforts" by parents of Indian students to obtain enrollment numbers from tribal authorities for next year only. Originally this action was required to allow programs to submit application proposals for Title IV-Indian Education funding for the 1986-87 funding cycle that were due February 13, 1986. Unfortunately, it did not have the full affect of law requiring the Office to comply with Congress' wishes, still the Office did allow programs to count those currently enrolled eligible Indian students to be counted for the 1986-87 funding cycle. Due to the time crunch that resulted, a later due date for new applications was announced to include all eligible school districts to submit proposals. This resulted in a delay that will probably make funds available at a later date than originally planned. Some Indian Education summer programs may be unable to operate since funds may arrive after their operation. The joint resolution also did not provide for a longer term answer to the continuing problem of many Indian parents and their children who are unable to obtain such enrollment information because of a number of factors beyond their control.

ISSUES:

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Requiring the revised 506 Indian Student Certification form to be "completed", (i.e., a membership number or "evidence of recognition by the Secretary of the Interior, such as by Certificate of Degree of Indian blood, or certification of the individual's membership by the tribe, band, or other organized group of Indians") is unreasonable for eligible Indian students or their parents and/or legal guardian because of the many issues involved. A February 5, 1986, letter from the Indian Education Programs office to school district superintendents states, "The intent of the letter was not to impose any additional requirement beyond that currently required by the Part A statute and regulations. The letter was provided to assist Part A applicants in determining what constitutes the completion of Part I-C of the form."

As previously discussed, requiring enrollment numbers for eligibility is an added requirement not stated by Part A statute and regulations. An informal telephone survey of Oregon Title IV-Indian Education programs in February 1986 indicated that roughly 3/4th of the currently served eligible Indian students would be eliminated from receiving special academic and culturally-related program services. Since regulations require that Title IV-Indian Education services be provided only after all other resources have been exhausted, 3/4th of those currently served eligible Indian students would not receive those locally identified service needs. The remaining Indian students who did meet the new "requirement" would also be jeopardized since programs would be left with such a small number of participants that many Indian Education programs would cease to exist.

The Bureau of Indian Affairs Johnson-O'Malley Indian Education Program is limited to serving only Indian students who are registered members of Federally recognized tribes who meet stringent blood quantum requirements. There is little duplication of services between Johnson-O'Malley (JOM) and Title IV-Indian Education programs as evidenced by repeated Congressional studies. Both programs serve the needs of Indian students in different ways, and often meet the needs of different Indian students. Title IV-Indian Education provides services to a broader category of Indian students, including: (a) Members of terminated tribes (of whom there are many in Oregon); (b) First and second degree descendants of Federally recognized tribal members; (c) Members of non-Federally recognized tribes; and (d) Anyone considered by the Secretary of the Interior to be an Indian for any purpose.

"Requiring" enrollment numbers would also eliminate other currently eligible Indian students under Title IV-Indian Education who: (1) are adopted or whose parents have been adopted, (2) have multiple Indian tribal heritage but without enough blood quantum to meet minimum tribal enrollment requirements, (3) have dislocated families and resulting broken ties with tribal authorities, (4) have parents unable or unwilling to contact other family members and tribal authorities (either through death or divorce or single status), (5) lost or destroyed family and/or tribal records, (6) tribal authorities who are unable or unwilling to search available tribal records, (7) who have parents who are distrustful of governmental interference and unwilling to release enrollment information, (8) students with Canadian Indian heritage, (9) students in local children's protective services and/or juvenile services jurisdiction, and (10) families who have only recently begun the arduous task of tracking family genealogy.

Adoption: A small, but significant number of students are not technically eligible for services because they cannot "complete" the 506 form. Either a parent or the student him/herself has been adopted, the records indicate Indian heritage, however, further inquiry is impossible.

Multiple Indian Heritage: In Oregon, because many tribes were dislocated and moved to confederated reservations, many students have Indian heritage from more than one tribe. They may not be eligible for enrollment, however, because they were born off the reservation and do not meet the tribe's blood quantum requirements.

Tribal Dislocation: The 1980 census demonstrated that over one half of the Indian population lives off reservation. Many of these families were relocated, moved to escape discrimination, or were pressed to assimilate into urban areas. They have lost contact with tribal organizations and communities, but now seek a positive Indian identity for their children.

Family Stress: Individuals who have lost an Indian spouse through death or divorce, or had children through short-term relationships outside of marriage, are frequently unable or unwilling to communicate with in-laws or relations, or have lost touch with partner, and cannot verify roll.

Lost or Destroyed Records: Individuals have reported problems with loss of family records due to natural disasters, moves, family dislocations, and tribal record destruction or loss.

Tribal Procedural Problems: Tribes may or may not have sufficient personnel to conduct a time-consuming search of tribal records. Enrollment committees may have limited openings available for enrollment, or rolls may be closed. In attempting to verify student eligibility, many Indian Education programs in Oregon have reported long delays in hearing from tribes who are trying to respond to the sheer volume of requests for help.

Parental Distrust: Indian Education programs in Oregon have reported instances where students wishing to participate have been unable to persuade parents to sign the 506 form. These parents are distrustful of governmental attempts to learn personal information.

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Canadian Indian Heritage: Tribes named under the Jay Treaty should be deemed eligible for services under U.S. Department of Education's Indian Education Programs. Tribal members who have left the reserve have reported loss of enrollment information and privileges.

Children Under Protective or Juvenile Services: Indian children under children's protective services care or in juvenile justice custody may or may not have easy access to information about Indian Education program services. Unless the community has an Indian Child Welfare Act Program, case workers are often uninformed about Indian Education programs or how to proceed in registering Indian students. In some instances, case workers have been reluctant to investigate the child's Indian heritage or provide a "in loco parentis" signature on the 506 form.

Families Recently Tracing Family Indian Heritage: Each year Indian Education programs are encountering families in Oregon who are registering Indian children for services for the first time. Many of them must begin the arduous task of researching their heritage. This situation occurs over and over again each year in Oregon Indian Education programs. If the "completed" 506 form is required then these families will not have the opportunity to complete their search and their children will be denied services.

RE-INVENTING THE ED FORM 506:

In an effort to clarify the ED Form 506, Indian Student Certification Form, so that it becomes a functional document which provides adequate information for a local program data base and meets local community needs while satisfying necessary eligibility requirements, the Oregon Indian Education Association (OIEA) began a statewide study with Title IV-Indian Education programs. Members of the OIEA Legislative Subcommittee on Policy Development took the current 506 form and cut and taped it back together in a more useable format. Since the current ED Form 506 (8/79) was developed to be used in the Indian Definition Study and was designed to be originally torn apart for the study without specific personal identification information included, items did not necessarily follow in a clear flow. This revised draft 506 form was then sent out to all Oregon Title IV-Indian Education programs for review, comment, and discussion with parent committees. Results from that statewide inquiry resulted in general consensus that enrollment information should be included where it more clearly identifies those children for services, but not to be used to serve a dual purpose or to screen other Indian children from services where such enrollment numbers are not available or applicable.

The current OE Form 506 (8/79) asks for the individual's membership number (where applicable) and whether this is an enrollment number, allotment number, or other. It also asks if there is an organization which maintains membership data for the tribe, band, or other organized group, if "yes" the name and address of the organization, followed by "If 'no', explain how the person indicated meets the definition of Indian given at the top of this form". By moving (or eliminating) this information concerning the name and address of the organization which readily available to project directors, after the form asks for membership numbers should be inserted, "If none, explain how the person indicated meets the definition of Indian given at the top of this form". Information currently requested of the parent on the tribe, band, or other organized group as to its status is also not necessary for determining Indian student eligibility for services.

Other changes would eliminate the need for two parent signature blocks and add the child's birthdate to provide greater ease in identification. A block to give the address of the school that the child currently attends when the form is completed is unnecessary. When asking for the name of the parent or grandparent who claims membership, FIRST AND LAST NAMES would be helpful. When membership numbers are not applicable, then the back of the form could be used to provide for family tree information. Other evidence could also be attached for individual cases as needed, i.e., statement from an adoption agency, etc.

Any change in the ED Form 506 should be made so that existing forms on file remain valid until that child leaves the program. Title IV-Indian Education was originally designed to be a broad-based, locally determined program to meet the special culturally and academically related needs of Indian students. Its purpose was also to provide for parental participation in the education of their children. Requiring another form for those students already enrolled would jeopardize the trust that has developed between programs and parents over the years. Proposed changes in the ED Form 506 would not require additional information from the current (8/79) form (except for birthdate); therefore, existing forms should be acceptable in the future.

Proposed ED Form 506 should include: Why the information is requested; the definition of who is eligible by including the definition of "Indian"; name and address of eligible child; grade and BIRTHDATE; name of school; who is the member (child, natural parent, natural grandparent); full name if other than child; name of tribe, band, or group; membership number (if applicable) and check if it is an enrollment number, allotment number, or other (explain); If none, explain how the person meets the definition of Indian given at the top of the form; and parent signature and date attesting to the information and giving consent to release the information to the Title IV, Part A, Parent Committee.

Congress has demonstrated a commitment to the education of Indian children in the past; we know that they will not let an administratively derived "rule" eliminate eligible Indian children from services. Through adhering to the initiating law and regulations, Indian Education services will continue to serve all eligible Indian students in the future.

Mr. KILDEE. Mr. Egawa.

**STATEMENT OF JIM EGAWA, COORDINATOR, INDIAN EDUCATION,
TACOMA PUBLIC SCHOOLS, TACOMA, WA**

Mr. EGAWA. Congressman Kildee, Mr. Gunderson, I would like to thank you for inviting me here this morning. My name is Jim Egawa. Currently, I am the coordinator of the Indian Education Program in the Tacoma Public Schools. I served in this capacity for the past 11 years.

Today what I would like to do is simply focus in on portions of my written statement, which I am sure all of you received. I sent it earlier this week.

The two areas I guess I—first of all, I would just like to state that all the testimony that has been made thus far can pretty much apply to our situation, and a lot of the emotion and a lot of the concerns that were shared are very similar to the types of things we experience within our school district and with our parents and with our students on the whole issue of 506 census forms.

The issue itself at this point, and, as I understand it, the way it is worked out for us is that over the past 11 years, we have counted our students, the count we have submitted has been based on the count of completed 506 census forms plus those census forms that have a letter of good faith attached.

In our school district, which is pretty representative of much of the larger urban programs, we have 1,140 Indian students out of a population of 28,000, plus in the Tacoma Schools, that represent over 100 different tribes with varying blood degrees, from one-sixteenth to four-fourths, they represent a pretty good background of reservation rural and urban Indians.

At this point the concern, no student has been denied services that has chosen to identify as Indian by either the district, by the parent or the students themselves, and again the 506 census form has been used or the letter of good faith has been attached. The percentage that we have had over the years has been as high as 30 percent in terms of students that have not been able to complete the census form in its entirety. At least 30 percent have had difficulty in obtaining the necessary information.

And what I would like to really focus in on are probably the 10 most common areas that are preventing us from being able to meet our 506 census forms on each student or the 30 percent that I talked about. That particular student can be identified either as a student who is adopted or a foster child. It has been extremely difficult to obtain legal access to records and to get the necessary information that would be necessary to obtain an enrollment, a tribal band or recognized enrollment number.

The other area that affects us quite commonly in the State of Washington is the issue of the Canadian Native born or the Canadian Native ancestry of that particular student. The student may be born in the State of Washington, but his tribal ancestry goes back into Canada, so, therefore, that creates some problems of obtaining an enrollment number.

We have also experienced recently some students that are from Mexico, Central and South America, that are Indian and the con-

cern is do we deal with them similar to the situation of the Canadian Indians?

The fourth area is that Indian students, we have Indian students in the district who do not have a quarter degree of Indian blood in any one particular tribe. In some cases, you could have a student that is not a quarter degree, so they can be recognized and registered through the Bureau of Indian Affairs; therefore, they wouldn't have an enrollment number.

The other problem common is we have a lot of Aleut and Eskimos. Not all of these students have enrollment numbers.

Six is some tribes close their rolls due to settlement negotiations or tribal policies.

Seven, some parents identify their children as Indian because of family oral history, but no other written information is available for research.

Eight, the student is Indian, but the parent chooses not to identify the child as Indian because of past social circumstances that have been alluded to earlier. Concern is that the child wants to be identified as Indian and is accepted by his peers as being Indian.

Nine, some tribes have been terminated and the tribal memberships have assimilated into society, and an organized group does not exist, although the family and the children still identify as Indian.

The 10th one is interracial marriage, where divorce occurred and the children remain with a non-Indian parent. Because of personal reasons and lack of communications, it is not always possible to obtain the information.

So those have been the 10 areas that have affected our program at Tacoma in terms of being able to obtain the necessary enrollment number. The recommendations that we came up with, and this is representative of our Parent Committee, the school district and also the State of Washington, we have the Washington State Indian Education Association, as well as the Western Washington Native American Consortium, the recommendations, if it does entail coming up with a criteria that is necessary to determine who is eligible and who should be counted as far as the funding, our recommendation is to, through legislative action, to add a new section to the regulations, and this section would be called the criteria for student eligibility.

Under this section, it would appear, or modified to not eliminate any students—just being here this morning, I gained a strong sense the philosophy is not to eliminate any students, to service students as so recognized by the community as eligible participants to the program.

We find it acceptable, since there is a fair merge of students so we can obtain an enrollment number, the criteria would include the same cited criteria Indian who has a recognized enrollment number of grandparent, parent or child.

We also would like added to that adopted or foster child with a notarized statement from the parent or adoption agency attached to the 506 census form.

Third, that American-born students with Canadian-Mexican-Central and South American ancestry, would have a notarized letter from the tribe band or organization.

Fourth, an area that would open the doors to students that are in a situation where there is no way that we know that they can attend—possibly obtain any kind of enrollment number is to allow active membership to the following local Indian organizations and groups which are recognized by the local Indian community. These are some of the organizations and groups that exist in the State of Washington that are recognized by the Indian people.

One is that membership number be sufficient in belonging to any urban or rural Indian center; two, birth certificate of either grandparent, parent or child stating that they are Indian; three, membership to any intertribal organization that exists within that State; four, school district or tribal sponsored youth leadership and cultural groups, which would be a notarized letter signed by the program administrator; next would be membership to any Native American corporation, this would include the Alaskan Native and Eskimos, the ones affiliated with any kind of corporation.

Next would be an Indian trust land allotment number stating ownership by grandparent, parent or child. Earlier there was a gentleman that mentioned the allotment number that he had but not an enrollment number.

Next, a notarized letter from any tribal group seeking Federal recognition. Next would be any form of identification number or documentation that pertains to obtaining medical or dental services through any American Indian health program, Federal program.

Next would be a genealogy chart with letter of verification by the particular tribe indicating that they are ancestors of tribal members but may not have the necessary blood quorum to be enrolled in that particular tribe.

So those were the recommendations by the State of Washington and by our school district, that that section be added to the regulations so that it would open the doors to all students.

Mr. KILDEE. Could you get those recommendations to us in writing? I know they will be transcribed for us, but if you have those in writing, could you leave them with the counsel?

Mr. EGAWA. I sent 25 copies in.

Mr. KILDEE. They are specific, and they are something we might want to discuss in the meeting with Dr. Davenport this very day.

You may continue.

Mr. EGAWA. The other points that I would like to stress, in addition to the issue of the 506 census form and to our recommendations, is we really feel any way that students are eliminated can have a double effect. One is the psychological effect of denying students the opportunity to participate in the educational program.

Now, all the program in its entirety does not strictly address financial need or academic needs, but also stresses social interaction. We have a lot of cultural emphasis now, we have a lot of community involvement, and we find that most students and parents do not sign their children up for the Indian education program for the money. There is no money really to be gained. It figures out we get about \$140 per student. So there is not really the factor that money enters into it, it is the total concept of the program and the types of things that we can do with the public school that make it effective.

Our success is, I think has been tremendous over the years. In 11 years we have made tremendous progress with the type of budget that we are working on. Actually our total national budget for Indian education under title IV, part A, amounts to about 45 percent of our school district budget each year, and we have been able to measure some real success in the areas of, just to mention a few, 11 years ago when I started with the program, we had 1,400 Indian students in the district and only two or three were graduating, and the dropout rate was starting at the junior high level. By the time they reached senior high school, there were only two or three who actually made it. Today we are graduating 35 to 40 each year, with about 50 percent of those going on to college and at least over the last 11 years, 30 percent of those succeeding in college.

We have been able to develop a much-needed area and that is future role models. We have a lot of young Indian people, and again who range in degrees of blood, from one-sixteenth to one-fourth, who represent the very population we are working with, which has been very successful. We have been able to do a lot in terms of restoration of self pride and self esteem on the part of our students. We have been able to promote a great reduction in what will be the future welfare rolls of our young people—we have had to look at that.

We have done a lot in the area of career development and expanded the horizons in those areas. So we feel if in fact you come up with some type of policy that would eliminate us being able to count the students who choose to identify, not only affecting them psychologically, but also I think there would be tremendous damage to the title IV programs.

At this point, most of our programs are, I think, in the area of 85 percent to 90 percent almost in some cases—the money is tied up in salaries. If any type of reduction should come about, we are going to be eliminating people, which in turn will eliminate direct services to students. So we see that as a real—will have a real damaging effect on all the programs.

The only thing it can do is set us back in time. The final—it will be open to questions, but I think the final point is that the intent of the law back when this study was made, one of the primary reasons why Indian students were not succeeding in the public schools was due to Federal policy failure. If this is handled incorrectly, it will only add to further Federal policy failure, and that it will only continue and recreate the dropout rate.

I think just this year the mention that students could not be counted on the 506 census form resulted in a number of smaller programs not even bothering to apply; therefore, those students are going without services next year, and whether they still turn in the proposal or not, I am not sure, but those students will, in fact, suffer without the assistance of a title IV program.

So I would like to just close with that. I look to this committee to come up with a solution that will be a solution that will result in the continued service of young Indian people in the school system and that there is tremendous progress being made, and we just need more time, and we need more commitment in terms of dollars so we can start again making long-range plans and setting goals

and objectives to continue to address the needs of special academic and cultural needs of our students.

Thank you.

[Prepared statement of Jim Egawa follows:]

**PREPARED STATEMENT OF JIM EGAWA, MEMBER OF THE LUMMI TRIBE, COORDINATOR OF
THE INDIAN EDUCATION PROGRAM, TACOMA PUBLIC SCHOOLS, TACOMA, WA**

BACKGROUND INFORMATION

Tacoma is the third largest city (population 174,000) in Washington State. The School District has a total student enrollment of 28,357 (October 1985). Of this count 1,140 (May 1986) are "Indian" students, K-12, representing one hundred different tribes, bands or other group of Indians. Blood degree ranges from 1/16 to 4/4. These students are representative of reservation, urban and rural backgrounds. Tacoma School's Indian student population and make-up is representative of other school districts throughout the nation.

Each year for the past thirteen years our program and District have had to address the difficult task of completing and updating the "Indian Student Certification" 506 Census form required on each identified student. Students are identified by "parent," student and district.

For some of the students there is no difficulty in completing the forms with the required information and enrollment number. During my eleven years, however, we have had as many as thirty (30) percent of the students with incomplete forms due to the lack of enrollment numbers.

We have always submitted our enrollment count based on students with completed forms and those approved by the Federal Department of Education who were actively seeking enrollment numbers. We always kept official documentation (letter of intent by "parent") on file stating that legal or other methods were being used to obtain an enrollment number for their child(ren). With this process some numbers have been obtained. For other parents the problem of seeking a number still exists. These children are not officially documented although they are included in our count.

ISSUE

We understand that an official decision must be made to determine a fair criteria to be used in identifying Indian students to be funded and served by the Indian Education Act, Title IV, Part A.

Over the past thirteen years we have been able to identify situations and circumstances whereby students cannot provide all the required information, mainly the enrollment numbers.

The circumstances we have recorded are as follows:

1. Students who are adopted. Unable to obtain any information because of legal issues and in some cases no official documentation available in records that "parent" have available.
2. Students placed in foster homes. Same situation as adopted children, also there is a high cost of legal research.
3. Students are American by birth but have Canadian Native tribal affiliation. We also have recently experienced the enrollment of students who have Mexican, Central and South American Indian backgrounds.
4. Indian student(s) who have Indian blood but not 1/4 degree in any one tribe, therefore are unable to qualify for requirement established by Bureau of Indian Affairs or tribe to receive an enrollment number.
5. Not all Eskimo, Aleut and other Alaskan Natives have enrollment numbers.
6. Some tribes have closed their enrollment role due to settlement negotiations or tribal policy.
7. Some "parent(s)" identify their child(ren) as "Indian" because of family oral history but have no other written information available to conduct research.
8. Student is Indian, but "parent" chooses not to identify child as Indian because of past social circumstances. Concern is that the child wants to be identified as "Indian" and is accepted by his peers as Indian.
9. Some tribes have been terminated and the tribal members have assimilated into society and an organized group does not exist, although again the family and child(ren) still identify as Indian.
10. Inter-racial marriage where divorce occurred and the children remained with non-Indian parent. Because of personal reasons and lack of communication it is impossible to obtain any information.

These are some of the common reasons we have been unable to obtain the necessary information required. We also know that these are also common concerns with other programs in Washington and surrounding states.

RECOMMENDATION

Because we see and work with these students and families on a daily basis, we understand and realize their need for academic and cultural assistance. Our concern is that these students who do not have the necessary enrollment number not be eliminated from the official count or be denied services. It is very common that many of these are the students who are very visibly Indian and obviously have a high degree of Indian blood.

Our recommendation is that the following action be taken in the form of legislative action. This action would support the intent of law by assisting those Indian students who were a part of the study made to create the Indian Education Act, Public Law 92-318.

Therefore, we recommend that a new section be adopted into the regulations of the Indian Education Act, Title IV, Part A, stating Criteria for Student Eligibility.

Under this section it would appear that the following criteria would be acceptable and transferred to other school districts.

1. "Indian" who has a tribal, band, organization enrollment number of either grandparent(s), parent(s) or child.

2. Adopted or foster Indian child with a notarized statement from the "parent" or adoption agency attached to 506 Census form.
3. American born Indian student with Canadian, Mexican and Central and South American ancestry. For Canadians, enrollment number or notarized letter from Tribe, Band or Organization. For Mexican and South and Central American, a notarized letter signed by "parent" or sponsor.
4. Active membership to the following local Indian organizations and groups which are recognized by the local Indian community.
 - a. Urban and rural Indian centers (membership number)
 - b. Birth certificate of either grandparent(s), parent(s) or child stating Indian
 - c. Inter-tribal organizations (notarized letter of membership)
 - d. School District and Tribal sponsored youth leadership and cultural groups (notarized letter by Program Administrator)
 - e. Membership to Native American Cooperations (membership member)
 - f. Indian trust land allotment numbers stating ownership by grandparent, parent or child (allotment number)
 - g. Tribal groups seeking Federal recognition (notarized letter)
 - h. American Indian Health identification card (identification number)
 - i. Verification of tribal ancestor for tribe (notarized letter from tribe)

RESULTS WITH ADAPTION OF RECOMMENDATION

As stated, it is very clear that we want to be able to serve all the students who identify as Indian. Our recommendation is to eliminate any Federal policy that will promote more educational failure. Keep in mind that one of the reasons the law was created was based on Federal policy failure. Let's not enforce or support a policy which can only increase lack of educational support for the Native American student.

If our recommendation is accepted and adopted into policy, we can continue to address the academic and cultural needs of all Indian students. Based on the amount of funds appropriated to the Indian Education Act, Title IV, Part A, tremendous educational success has been achieved across the nation. Any businessman would be proud and be considered successful in our yield.

Thank you for this opportunity to address a very important issue facing the success and continuation of an important education program representative of our country's support of young people.

Mr. KILDEE. Thank you.

The question to all three of you is, to what degree has the Department of Education sought ideas from program directors on these proposed changes? I hear a long silence. To what degree has the Department of Education sought ideas or suggestions from program directors, like yourselves, and other people involved in Indian education on these changes which they propose to make for the 1987 school year? Has there been any effort to consult with you formally or informally when they use the term "input into these changes?"

Mr. LINSComb. I am not the program director, but I know the program director who reports to our office has not been contacted for any input relative to these changes. All the contact with the Department has been relative to the regulations as they were to be enforced this year, with no suggestion there be recommendations from our district as to how that might be changed.

Mr. KILDEE. So it has been a washout. There has been no two-way discussion on this?

Mr. LINSComb. There has been no two-way discussion. The two-way discussion has occurred with this committee and with counsel, Mr. Lovesee. We appreciate that opportunity, by the way.

Mr. KILDEE. We appreciate the fact we could play some role in delaying implementation for 1 year, and we are trying to see what we can do for school year 1987. I am determined to make sure every eligible student is served and not have a student ruled ineligible because of some reasons that need not exist or for important reasons. It is a difficult thing.

I understand they want to make sure they serve eligible students and spend the dollars as appropriated by Congress. But, at the same time, I guess I am wondering two things, how serious is the problem, and then in addressing the problem, are we going to exclude eligible students in order to maybe solve a problem that may be minor in nature?

I wish we had the wisdom of Solomon on addressing this, but I do think very often we in Washington, whether it be in the executive or legislative branch, since we do not have the wisdom of Solomon, should be seeking the advice of people out in the field who deliver those services on a regular basis. I think that might be the deficiency that we see here today. The Department has not sought that advice and sought those suggestions from you. Because I am certainly convinced of the fact that you all are people who are honest and people of good will who want to serve the Indian students of this country and that it is important in all these programs that we have dialog with people out there who day by day are involved in the delivery of these services.

I again offer to this group, as I did to the previous panel, to take input and advice on an informal basis. Call me, write me, call Mr. Lovesee, call Mr. Hartman, and call Mr. Gunderson. I can't speak for another Member of Congress but I can read his mind well because he has been involved since his coming to Congress with trying to serve the Indians of this country well.

Let's keep those informal channels open, too, not only on this issue but other issues affecting the education of Indians in this country.

Mr. Thornton.

Mr. THORNTON. I think everyone feels a real frustration. It has been for a long time—I think it was 2 years ago when we were talking about reauthorization of the law. I think I wrote a 4-page indepth report on each of the items in there that I questioned, and of that number, maybe 2 or 3, as required in the law, have been accepted, it has to be addressed, all of those different items, and they weren't all I had in there.

It is serious, because we are talking about through this process cultural genocide by definition.

Mr. KILDEE. My greatest fear is that in their attempt to make sure they are serving only the eligible students that we again, to repeat myself, we are going to be driving away by fear or intimidation or complexity, by bureaucratic entanglement, those who really are qualified. That is our greatest fear.

That is why I want to keep those channels open. As I said, we have been able to delay new eligibility requirements, and this is not the first time the Department has tried to implement them. I remember several years ago we had to work with them again and again on this. I will again reiterate, let's keep the lines of communication open so we can play the role and serve the Indian students.

Mr. Gunderson.

Mr. GUNDERSON. I have no questions.

Mr. EGAWA. On your very first question, I too would like to say that I don't think the communication lines have really been that open. I think we get mixed messages in terms of what kind of information we can put in. It seems like we are always on the reacting end out in the field trying to pull together any kind of information at the last minute to provide some kind of input, and so I think that the whole intent of this very meeting is not quite clear to everyone in the field as to what we are trying to do exactly here, if we are trying to correct the problem that there is abuse going on out there, that a lot of students are being counted that shouldn't be, and our feeling is in the State of Washington that doesn't apply.

So I think just clearer communication lines need to be opened and greater communication so there is not this continued feeling of mistrust. I do feel the problem is very serious, and programs are very concerned about what is going to happen as far as being able to service the students in the year 1987.

So, again, I really appreciate being able to come here. In fact, this is probably the first time we have been able to come back and address this particular issue.

Mr. KILDEE. The longer I am in Washington, the more I realize that Washington, DC, is not the fount of all wisdom or the fount of all knowledge. There are people out there who, on a day-by-day basis, are experts in this and that we should tap that expertise.

Mr. Gunderson and I have to do that regularly. I go back to my district at least every other weekend. I was home the last four weekends in a row until Father's Day. I stayed with my family. I have to go out as an elected official to make sure that I am listening to those people, because there is great wisdom, great expertise out there. It isn't centered here in Washington.

There are people out there we really need. I think the executive branch of Government has to do that more, too, to reach out.

I want to express my thanks for all the witnesses for their testimony today. The record of this hearing will remain open for 2 weeks to allow witnesses to augment their record and receive other testimony.

We also may have some written questions for the witnesses today.

[The information follows:]

Mr. KILDEE. And with that, again thanking you, the committee will stand adjourned.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned subject to the call of the Chair.]

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